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May 30, 2008

Idaho Department of Water Resources
Sharla Cox, Administrative Assistant
900 N. Skyline Drive, Suite A.
Idaho Falls, Idaho 83402

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SEP 18 2008

Department of Water Resources
Eastern Region

Dear Sharla,

This is in response to your March 15, 2008 letter regarding the protest on the Application for Transfer Number 72799. Your letter suggests a direct contact with the protestant, Western Watersheds, to resolve this issue. Unfortunately Western Watersheds has a long standing history of negative interaction with the ranching community in Custer and Lemhi County and it is our opinion that any contact with Western Watersheds would be less than fruitful to resolve this protest. I do not feel Western Watersheds has provided sufficient information to warrant a protest of the proposed project.

The following will address the four questions that were noted in your letter:

1. *Will other water rights be injured by the proposed transfer?* This transfer will not negatively affect other water right holders on Goldburg Creek or the Pahsimeroi River. The Pahsimeroi naturally de-waters (sinks) below the irrigation withdraw for this water right. Pahsimeroi water is transported in a cross ditch to Goldburg Creek providing water in the Goldburg system for both irrigation and fisheries. In fact the use of sprinkler irrigation versus flood will reduce the water needed on the 278 acres of property being served by the new gravity system. This should provide a positive impact on both water users, the stream and fisheries.
2. *Will the proposed change constitute an enlargement in the use of the original rights?* No, the irrigated area in question is limited to 374.1 acres. The area being covered by the new pipeline will include 278 acres with approximately 3.9 cfs. Total cfs available for these 374.1 acres is 14.6 cfs. By transferring 6 cfs to this location there will be 2.1 cfs that will remain in-stream via this transfer. The remaining 96.1 acres will continue to be flood irrigated from existing diversions that have water rights to the remaining 8.6 cfs. It is not necessary to expand or increase the water needed over the 430 inches or 4.47 inches per acre that is

allotted for the 96.1 acres under flood irrigation. This transfer may provide the opportunity to prevent the de-watering of Goldburg Creek in the reach of the stream below the new POD with the 2.1 cfs that is not used for the gravity system.

3. *Will the proposed change conflict with the local public interest?* No, this area is predominately public ground used for recreation or in agricultural production. The project will improve the ability to retain the agricultural tax base and stability of the agricultural economy. This project will not negatively impact the recreational interests of the area. Short term construction will have little or no impact to recreation. The long term impact and retaining water in-stream in Goldburg Creek will have a positive impact on recreational fisherman in the area. Please note that the this question addresses "local public interest". Western Watersheds is not a "local" interested party.
4. *Will the proposed change be contrary to the conservation of water resources within the State of Idaho?* Again, this answer is NO! In fact this is a project that is proposed specifically for water conservation of the irrigation water withdrawn from Pahsimeroi via Goldburg Creek (please note detailed response to #2).

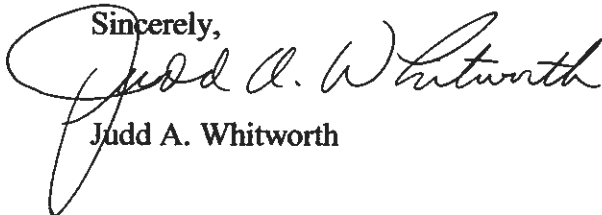
The second protestant to this transfer was the Bureau of Land Management. They have noted that an application for right of way is in process which addresses #4 of WW protest. This application for right of way is attached for your review. In several areas of this application public benefit is noted as part of the process for requesting right of way. I have continued work with the BLM to address requirements of this right-of-way.

It is also important to note that this transfer must be complete before the gravity pipeline can be installed. This project is funded via a cost share with the Natural Resources Conservation Service through their Environmental Quality Incentive Program (EQIP). The application for these funds also addresses environmental benefit for the project. A delay in the transfer will certainly jeopardize funding for this project.

In conclusion, Western Watershed's protest is frivolous at best and does not provide sufficient evidence that this project will harm other water users, enlarge the existing water right, cause public harm or be contrary to the conservation of water in the State of Idaho. I am prepared to provide written evidence from local water users if necessary to support the information included in this correspondence.

I would greatly appreciation your efforts to complete this transfer as quickly as possible in order to retain project funds made available for the gravity pipeline. Please notify me as soon as possible if a hearing is necessary to complete this application. Thank you for your assistance in this manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Judd A. Whitworth". The signature is fluid and cursive, with a large loop at the beginning and end.

Judd A. Whitworth