



State of Idaho

DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

March 6, 2007

Barry T Williams
1277 Mink Creek Rd.
Arbon, ID 83212

Stuart and Judy Adams
1271 Mink Creek Rd
Arbon, ID 83212

Re: Water District Creation – Bannock Creek Area

Dear Mr. Williams and Mr. and Mrs. Adams,

Mr. Williams' letter of December 16, 2006 and Mr. and Mrs. Adams' letter of January 30, 2007 have been forwarded to me for response. Both letters were submitted to the Director of the Idaho Department of Water Resources ("Department") and both letters ask the Department to create a water district in the Bannock Creek drainage. Your letters were forwarded to me since I am the primary Department contact regarding creation of new water districts.

The Department's priority for creation new water districts and/or modification of existing water districts in Idaho over the past year have been in the Eastern Snake Plain Aquifer ("ESPA") and the Upper Salmon River Basin. I recently held a hearing and am in the process of assisting the Director in issuing a final order expanding Water District No. 120 to include ground water rights in the lower Blackfoot River basin. This expansion of Water District No. 120 will complete a process of including all ESPA non-deminimis domestic and stockwater ground water rights in a water district.

Creation of a new water district in the Bannock Creek area has not been a high priority for the Department. This lack of prioritization for Bannock Creek is not intended to diminish your concerns or the importance of including Bannock Creek in a water district, but rather reflects the demands and urgency for water rights administration in other areas of the state, as well as the limited resources of the Department over the past several years. However, relative to your letters I have initiated the following action over the past month:

- Contacted appropriate representatives of the Shoshone-Bannock Water Resources Department concerning potential creation or expansion of one or more water districts in the Bannock Creek drainage for administration of both surface and ground water rights. Coordination with the Shoshone-Bannock Tribe is important since about half of the Bannock Creek drainage is within the Shoshone-Bannock Tribal Reservation and the Tribe owns water rights from Bannock Creek. I have brought this matter to the Tribe's attention and have asked for their input regarding your requests and possible water district scenarios. I was advised that the matter would be taken up with Elise Teton, Shoshone-Bannock Tribal Water Resources Department Engineer, when she returns from a leave of absence later this month.

- Sought comments from representatives of the Aberdeen-American Falls Ground Water District (AAFGWD). The boundaries of the AAFGWD extend to the Bannock Creek drainage in southeast Power County outside of the Shoshone-Bannock Reservation. Some ground water right holders in the Bannock Creek drainage area are also members of the AAFGWD. The AAFGWD supports expansion of Water District No. 120 to all of the AAFGWD in Power County. Currently, Water District No. 120 is limited to just that area within the ESPA in Power County.
- Sought comments from the Water District No. 01 watermaster regarding inclusion of Bannock Creek surface water rights in Water District No. 01. The watermaster at this time prefers that Bannock Creek not be included in Water District No. 01.
- I am in the process of compiling a comprehensive list of surface and ground water rights in the Bannock Creek drainage, as well as the Michaud Creek drainage. This is an early step in considering options regarding creation of a new water district or expansion of one or more existing water districts in the area.

I am not comfortable at this time committing the Department to any specific timeline for creation of a water district in the Bannock Creek area. I am committed to completing a compilation of both surface and ground water rights in the drainage, continuing a dialogue with the Shoshone-Bannock Tribe, making one or more field visits to the area this irrigation season to inventory diversions, and outlining water district options and recommendation to the Director for the Bannock Creek and surrounding drainages. I can commit to completing these tasks sometime this summer. The Department can **consider** holding one or more hearings later this year regarding creation of a district or inclusion of the area in one or more water districts.

Before closing, I wish to respond to several items in Mr. Williams' letter. That letter states that I advised Mr. Williams that the Bannock Creek drainage "would most likely be included in Water District 01 and 120 the fall of 2006." I do not believe that I committed the Department to place the area in a water district in 2006 but instead indicated that the fall of 2006 was the earliest possible period the Department might hold a hearing(s) on the matter.

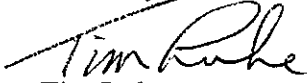
Mr. Williams stated in his letter and previous phone conversations that a water district is necessary to address further injury to his "classified wetlands" or meadows. Mr. Williams holds no water right(s) for these meadows and therefore cannot make a water delivery call to protect these meadows or wetlands. I see no direct benefit to Mr. Williams' meadows by including the Bannock Creek drainage in a water district.

Mr. Williams last letter also claims injury to water right 29-10990, an irrigation right from Rattlesnake Creek, tributary to Bannock Creek. Specifically, Mr. Williams alleges that junior ground water rights 29-2458A and 29-7931A affect water right 29-10990. The Department notes that the points of diversion for these particular junior ground water rights are located near Bannock Creek some nine to twelve miles southwest of Mr. Williams point of diversion on Rattlesnake Creek. Although the Department has made no investigation of injury between these junior rights and Mr. Williams's irrigation right on Rattlesnake Creek, we believe

it unlikely that any direct interference or injury exists between these rights given the significant distance between them. We do believe that the junior ground water rights cited by Mr. Williams or other junior water rights may have more potential to affect his one-inch stock water right on Bannock Creek.

Please contact me directly at 208-287-4959 if you have questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Luke", written over a horizontal line.

Tim Luke

Manager, Water Distribution Section

Cc: Ernie Carlsen, IDWR Eastern Region
Gary Spackman, IDWR Administrator
David Tuthill, IDWR Director
Elise Teton, c/o Gail Martin, Shosone-Bannock Water Resources Department
Bill and Deanna Curry
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