Water District No. 65

Payette River Basin, State of Idaho
102 North Main Street
Payette, Idaho 83661

Watermaster
Ron Shurtleff

Phone (208) 642-4465
Fax (208) 642-1042
E-Mail waterdist65@fmtc.com

April 8,2002

AGENDA

1) Approval of Minutes

2) Financial Report

3) Water Year Forecast April 1, Report – **USBR, Rick Wells**

4) Water Accounting Report –**IDWR, Pam Pace, Bob Sutter, Gary Spackman**

5) Cost Share Requests

   a) Black Canyon Irrigation District, **D-line Ramp Flume**

   b) Lower Payette, **Buttermilk Slough and Tail End**

   c) Emmett Irrigation District, **Pipe Project**

6) Unimin, Relocate River Diversion

7) Compensate Peggy for time devoted to District 65

8) Talent Decision- Use of Aquatic Herbicides

9) Any Other Business to Come Before the Board

10) Adjournment

ADVISORY BOARD MEETING MINUTES
WATER DISTRICT NO. 65
FEBRUARY 18, 2002

The Advisory Board of Water District No. 65 held a meeting at the District Office located at 102 N. Main St., Payette, Idaho on Monday, February 18, 2002, at 1:30 in the afternoon.

Those present were Mike Bankhead, Keith Standley, Gene Parks, Jim Standley, Dick Hamilton, Roland Arent, Duane Pancheri, Marcia Herr, Ron Mio, Marc Shigeta, Dean Charters, Chuck Pollock, Maynard Potter, Dan Surmeier, and Gary Spackman, IDWR.

The meeting was called to order by Chairman Bankhead, who welcomed those in attendance. The attendance record in its entirety is attached to these minutes.

Minutes Approved: The minutes from the Advisory Board meeting of January 25, 2002 were presented in written form to the Board Members for their review. **Jim Standley moved, Chuck Pollock seconded, to approve the minutes as presented. Motion passed.**

Bills Approved: The current bills were presented to the Directors for their approval. A copy of the bills detail is attached to theses minutes. **Keith Standley moved, Gene Parks seconded, to approve payment of the bills totaling $1,467.24. Motion passed.**

Cost-Share Applications: Chairman Bankhead presented three applications for cost-share for the Board to review. These applications, along with EID and BCID are contingent on the passage of the budget recommended by the Advisory Board, which includes $40,000 in cost share funding. The WD No.65 Annual meeting was postpone until March 4, 2002.

Farmers Co-operative Irrigation Co.: The FCIC request is for 50% cost-share of the installation of an overshot gate to control the up stream level that is fully automated at the Holbrook check structure. Total costs are estimated to be $16,12. If the annual meeting approves the $10,000 limitation, the cost-share request will be $8,064.50. **Maynard Potter moved to approve 50% cost-share for the FCIC Holbrook check automation project, contingent upon the actions of the District at the annual meeting. The motion seconded and passed.**

Noble Ditch Co.: The NDC request is for 50% cost-share of the installation of a new headgate structure and monitoring site at the Slaughter House Spillway. Total costs are estimated to be $6,870 for the project. **Maynard Potter moved, Marcia Herr seconded, to approve the NDC request for 50% cost-share for the Slaughter House Spillway project, continent upon the actions of the District at the annual meeting. Motion passed.**

Lower Payette Ditch Co.: The LPDC request is for 50% cost-share of the installation of a bi-fold headgate and fully automate the Buttermilk I site and install an automated bi-fold headgate and a monitoring site at the Buttermilk III location. Total costs are estimated to be $21,790 for both projects. **Dean Charters moved, Keith Standley seconded, to approve LPDC request for 50% cost-share for Buttermilk I and Buttermilk III projects, contingent upon the actions of the District at the annual meeting. Motion passed.**

Review of Watermaster Applications:
At this time, the Board reviewed the applications that were submitted for the vacated Watermaster position created by Mark Limbaugh. Following a review by the Board, a vote was taken to select the top candidates for phase II of the interview process. The following candidates were selected: Bradly Gore, Dennis Heaps, Tom Pence, Michael McEvoy, JoAnn Scriputure, Cline Waddell, Roy Maxwell, Ron Shutleff, and Dar Olberding.

The Board scheduled meetings for February 21st and 22nd at 1:00 p.m. to begin interviewing the nine candidates. Peggy Murphy, Acting Secretary was instructed to the contact the individuals and schedule the interviews in one hour increments.

Additional Business: Chairman Bankhead presented a request by Campbell Scientific with regard to granting permission to use the pictures of the automation sites that appear on the Water District No. 65 website to assist in promoting their equipment. **Dan Surmeirer moved, Marcia Herr seconded, to allow Campbell Scientific to use the automation pictures from the website for the purpose of promoting their equipment. Motion passed.**

Adjournment: Seeing no further business, adjourned at 4:00 p.m.

Respectfully submitted,

Peggy Murphy, Acting Secretary

Water District No. 65
Balance Sheet
As of March 31, 2002

	Mar 31, 02
ASSETS	
Current Assets	
Checking/Savings	
Checking - Water Dist.	199.08
State Treasurer	228,237.45
Total Checking/Savings	228,436.53
Accounts Receivable	
A/R - Assessments	58,995.67
A/R - Rental Pool	5,322.74
Total Accounts Receivable	64,318.41
Other Current Assets	
Automation Equipment Inventory	2,846.79
Total Other Current Assets	2,846.79
Total Current Assets	295,601.73
Fixed Assets	
Field Equipment	10,995.16
Office Equipment	16,355.98
Vehicles	26,798.00
Total Fixed Assets	54,149.14
TOTAL ASSETS	**349,750.87**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Cost - Share Funds Payable	3,390.00
IDWRB Fees Payable	-1,686.34
Payroll Liabilities	
Federal Withholding	244.00
FICA	
Company	186.00
Employee	186.00
Total FICA	372.00
FUTA	24.00
Medicare	
Company	43.50
Employee	43.50
Total Medicare	87.00
SDI	3.74
State Withholding	268.00
SUI	46.96
Total Payroll Liabilities	1,045.70
Total Other Current Liabilities	2,749.36
Total Current Liabilities	2,749.36
Total Liabilities	2,749.36
Equity	
Equity - Equipment	54,149.14
Retained Earnings	217,424.30
Net Income	75,428.07
Total Equity	347,001.51
TOTAL LIABILITIES & EQUITY	**349,750.87**

Water District No. 65
Balance Sheet Prev Year Comparison
As of March 31, 2002

	Mar 31, 02	Mar 31, 01	$ Change	% Change
ASSETS				
Current Assets				
Checking/Savings				
Checking - Water Dist.	199.08	13,450.06	-13,250.98	-98.5%
State Treasurer	228,237.45	263,553.40	-35,315.95	-13.4%
Total Checking/Savings	228,436.53	277,003.46	-48,566.93	-17.5%
Accounts Receivable				
A/R - Assessments	58,995.67	58,964.21	31.46	0.1%
A/R - Other	0.00	1,485.70	-1,485.70	-100.0%
A/R - Rental Pool	5,322.74	18,203.04	-12,880.30	-70.8%
Total Accounts Receivable	64,318.41	78,652.95	-14,334.54	-18.2%
Other Current Assets				
Automation Equipment Inventory	2,846.79	2,356.79	490.00	20.8%
Total Other Current Assets	2,846.79	2,356.79	490.00	20.8%
Total Current Assets	295,601.73	358,013.20	-62,411.47	-17.4%
Fixed Assets				
Field Equipment	10,995.16	10,995.16	0.00	0.0%
Office Equipment	16,355.98	15,832.05	523.93	3.3%
Vehicles	26,798.00	26,798.00	0.00	0.0%
Total Fixed Assets	54,149.14	53,625.21	523.93	1.0%
TOTAL ASSETS	**349,750.87**	**411,638.41**	**-61,887.54**	**-15.0%**
LIABILITIES & EQUITY				
Liabilities				
Current Liabilities				
Other Current Liabilities				
Cost - Share Funds Payable	3,390.00	38,618.01	-35,228.01	-91.2%
Deferred Revenues	0.00	29,627.84	-29,627.84	-100.0%
IDWRB Fees Payable	-1,686.34	196.08	-1,882.42	-960.0%
Payroll Liabilities				
Federal Withholding	244.00	300.00	-56.00	-18.7%
FICA				
Company	186.00	304.84	-118.84	-39.0%
Employee	186.00	304.83	-118.83	-39.0%
Total FICA	372.00	609.67	-237.67	-39.0%
FUTA	24.00	0.00	24.00	100.0%
Medicare				
Company	43.50	71.30	-27.80	-39.0%
Employee	43.50	71.30	-27.80	-39.0%
Total Medicare	87.00	142.60	-55.60	-39.0%
SDI	3.74	3.74	0.00	0.0%
State Withholding	268.00	450.00	-182.00	-40.4%
SUI	46.96	118.00	-71.04	-60.2%
Total Payroll Liabilities	1,045.70	1,624.01	-578.31	-35.6%
Water Rentals Payable	0.00	19,069.00	-19,069.00	-100.0%
Total Other Current Liabilities	2,749.36	89,134.94	-86,385.58	-96.9%
Total Current Liabilities	2,749.36	89,134.94	-86,385.58	-96.9%
Total Liabilities	2,749.36	89,134.94	-86,385.58	-96.9%
Equity				
Equity - Equipment	54,149.14	53,625.21	523.93	1.0%
Retained Earnings	217,424.30	250,926.43	-33,502.13	-13.4%
Net Income	75,428.07	17,951.83	57,476.24	320.2%
Total Equity	347,001.51	322,503.47	24,498.04	7.6%
TOTAL LIABILITIES & EQUITY	**349,750.87**	**411,638.41**	**-61,887.54**	**-15.0%**

№ 00965

BLACK CANYON IRRIGATION DISTRICT

P. O. Box 266
Notus, Idaho 83656
(208) 459-4141

Water District #65
102 N. Main St.
Payette, Id 83661

Section _____, Twp _____N., Rge _____ W.B.M. _____ Acres

ROLL NO.	1ST UNIT	2ND UNIT	GRAVITY	PUMP	RIDE NO.	A.F.
D-Line Ramp Flume Cost					25,350	61
Water District Cost Share					10,000	00
				TOTAL	10,000	00

Date 3-18-02 19_____

When paid in any form other than cash, receipt is issued subject to final payment of same.

Cash _____

Check _____

Becky Anderson
Treasurer
BLACK CANYON IRRIGATION DISTRICT

D-LINE RAMP FLUME COST

		INV #		COST
01/10/02 BLACK CANYON LUMBER	PAINT	19856	$	4.49
01/14/02 BLACK CANYON LUMBER	2X4/STAKES/ WIRE	19917	$	267.93
01/14/02 BLACK CANYON LUMBER	NAILS	19920	$	13.73
01/16/02 BLACK CANYON LUMBER	SAW BLADES	19965	$	7.19
01/17/02 BLACK CANYON LUMBER	STAKES PLIERS	19989	$	55.12
01/21/02 BLACK CANYON LUMBER	NAILS	20057	$	6.53
01/21/02 BLACK CANYON LUMBER	PLY	20075	$	657.99
01/22/02 BLACK CANYON LUMBER	2X4	20093	$	50.31
01/22/02 BLACK CANYON LUMBER	NAILS	20094	$	1.79
01/23/02 BLACK CANYON LUMBER	2X4	20119	$	500.48
01/24/02 BLACK CANYON LUMBER	LEVEL	20155	$	25.19
01/29/02 BLACK CANYON LUMBER	PIPE	20249	$	44.63
01/18/02 TATES RENT	TRENCHER	210-559694	$	170.50
01/25/02 G2B	PUMPER	38666	$	295.63
01/30/02 G2B	PUMPER	37640	$	274.38
01/31/02 AMERICAN CONST.	BRACKETS	4125122	$	62.50
01/31/02 AMERICAN CONST.	LINER	2172785	$	80.00
01/11/02 ROCKY MOUNTAIN STEEL	REBAR	54666	$	805.35
01/18/02 CITY TRANSFER	READY-MIX / 6YDS	78201934	$	411.90
01/18/02 CITY TRANSFER	READY-MIX / 6YDS	78201935	$	411.90
01/21/02 CITY TRANSFER	READY-MIX / 7YDS	78201940	$	512.05
01/21/02 CITY TRANSFER	READY-MIX / 6.25 YDS	78201941	$	457.20
01/25/02 CITY TRANSFER	READY-MIX / 6.25 YDS	78201959	$	457.20
01/25/02 CITY TRANSFER	READY-MIX / 10YDS	78201960	$	731.50
01/22/02 CCS	SNAP TIES	143878	$	227.00
01/30/02 CITY TRANSFER	READY-MIX / 10YDS	78201977	$	731.50
01/30/02 CITY TRANSFER	READY-MIX / 7.75YDS	78201978	$	566.93
01/30/02 COMPANY STOCK	READY-MIX / 5YDS	5YD	$	335.75
02/04/02 CITY TRANSFER	BUTTE ROCK	18205211	$	47.23
02/04/02 CITY TRANSFER	BUTTE ROCK	18205212	$	49.95
02/04/02 CITY TRANSFER	BUTTE ROCK	18205216	$	54.65
02/04/02 CITY TRANSFER	BUTTE ROCK	18205217	$	57.55
02/04/02 BLACK CANYON LUMBER	WIRE	20362	$	2.69
02/01/02 ROCKY MOUNTAIN STEEL	REBAR	53130	$	52.65
01/28/02 CCS	SNAP TIES	143987	$	32.00
01/29/02 AGRI-LINES	CMP	107453	$	233.20
02/07/02 BLACK CANYON LUMBER	LUMBER	20436	$	8.09
02/11/02 GARY PETERSON	BLANKETS	183716	$	30.00
02/07/02 CITY TRANSFER	READY-MIX 9.25	78202024	$	717.35
02/07/02 BLACK CANYON LUMBER	2X6X16	20436	$	8.09
02/12/02 CITY TRANSFER	BUTTE ROCK	18205442	$	54.98
02/12/02 CITY TRANSFER	BUTTE ROCK	18205441	$	54.54
02/12/02 CITY TRANSFER	BUTTE ROCK	18205421	$	54.94
02/12/02 CITY TRANSFER	BUTTE ROCK	18205420	$	52.00
02/12/02 CITY TRANSFER	BUTTE ROCK	18205418	$	55.89
02/12/02 CITY TRANSFER	BUTTE ROCK	18205417	$	54.13
02/12/02 CITY TRANSFER	BUTTE ROCK	18205443	$	54.28
02/12/02 CITY TRANSFER	BUTTE ROCK	18205444	$	52.26

02/12/02	CITY TRANSFER	BUTTE ROCK	18205485	$	53.91
02/13/02	CITY TRANSFER	BUTTE ROCK	18205484	$	51.93
02/13/02	CITY TRANSFER	BUTTE ROCK	18205483	$	51.23
02/13/02	CITY TRANSFER	BUTTE ROCK	18205472	$	54.06
02/13/02	CITY TRANSFER	BUTTE ROCK	18205471	$	54.79
02/13/02	CITY TRANSFER	BUTTE ROCK	18205462	$	52.41
02/13/02	CITY TRANSFER	BUTTE ROCK	18205460	$	53.84
02/13/02	CITY TRANSFER	BUTTE ROCK	18205461	$	52.88
02/13/02	CITY TRANSFER	BUTTE ROCK	18205459	$	54.76
02/13/02	CITY TRANSFER	BUTTE ROCK	18205452	$	49.62
02/13/02	CITY TRANSFER	BUTTE ROCK	18205451	$	51.78
02/12/02	BLACK CANYON LUMBER	SCREWS	20543	$	2.77
	MAN HOURS	LABOR		$	9,024.49
	EQUIP	MACHINE TIME		$	4,660.00
	STAFF GAGES			$	64.00
	TRUCK MILES		750/$1.50	$	1,125.00

TOTAL	$	25,350.61

Water District #65 Cost Share $10,000.00

Lower Payette Ditch Company
102 N. Main
Payette, ID 83661
(208) 642-3866

March 18, 2002

Water District #65

RE: Automation Reimbursement Request

Buttermilk Slough Spill and Tail End

Total expenses	$8,378.77
50% USBR	($4,189.39)
WD65	($3,390.00)
Net Cost to Lower Payette Ditch	$ 799.38

See attachment for actual expenses.

Lower Payette Ditch Company
Automation Quotes:

Item	*Projected Cost*
Buttermilk Slough Spill:	
CR10X Datalogger/Controller	$ 1,100.00
VS1 Phone Modem	$ 655.00
Stilling Well/Float and Pulley	$ 750.00
Fiberglass Enclosures and Relays	$ 80.00
Cell Phone and Datalink	$ 500.00
Battery	$ 50.00
Battery/Datalogger Enclosure	$ 400.00
Solar Panel/Regulator	$ 280.00
Grounding Rod/Wire/Clamp	$ 30.00
Miscellaneous	$ 200.00
Total Project Costs	$ 4,045.00
Tail End:	
CR510	$ 725.00
VS1 Phone Modem	$ 655.00
Stilling Well/Float and Pulley	$ 750.00
Fiberglass Enclosures and Relays	$ 80.00
Cell Phone and Data Link	$ 500.00
Battery	$ 50.00
Battery/Datalogger Enclosure	$ 400.00
Solar Panel/Regulator	$ 280.00
Grounding Rod/Wire/Clamp	$ 30.00
Miscellaneous	$ 200.00
Total Cost	$ 3,670.00
Total Projected Costs	$ 7,715.00
Less Cost Share - WD65	$ (3,390.00)
Less Cost Share - USBR	$ (3,857.50)
Net Cost to Lower Payette Ditch Co.	$ 467.50

EMMETT IRRIGATION DISTRICT
222 E. PARK STREET
EMMETT, ID 83617
(208) 365-4582

March 4, 2002

Water District #65
102 N. Main Street
Payette, ID 83661

To Whom It May Concern:

There was an error in the amount of pipe needed for the Main Canal project that EID submitted for cost share last month. The original amount requested was $2500; however, there is an additional $800 for pipe. **This would bring EID's request to $3,300.00**

Sincerely,

Carla Porath

Carla Porath
District Secretary

Steve Groening plant manager for the Unimin Corporation has informed the district of plans to move the diversion point of the Smith Ditch downstream on the river.

Unimin Corporation, Boise Cascade Corporation, and five Irrigators all have water delivered by the Smith Ditch. The Boise Cascade Corporation has in the past been maintaining the Diversion and its channel to where the stream enters their property and also though the Boise Cascade Property.

With the closure of the Boise Cascade Mill, the diversion and the channel will no longer be maintained by the Boise Cascade Corporation.

Mr. Groening has presented to the Irrigators, and the Boise Cascade Co. the idea of moving the diversion point down stream, to the west property line of the Boise Cascade Co. Water would be pumped though a pipeline to a lower point on the Smith Ditch. This is to avoid the costly maintenance of the channel, and the diversion point.

Mr. Groening stated that he has plans to install one large pump to supply the Unimin Company it's requirements, and also a smaller pump to meet the need of the Irrigators. The Boise Cascade Corporation has also reserved the right in the plans to place a pump at the same site in the event that the company would have a need to use their water.

The Unimin Company has times when they do not use water, and would be able to reduce the amount of diverted water during these times. This is the reasoning for the two pumps.

Boise Cascade Corporations position is that they will allow the water users of the Smith Ditch to continue to divert water as in the past though the Boise Cascade property, however, the company can so longer maintain the diversion, and channel.

This proposal would could include closer monitoring of the water that is diverted though the Smith Ditch, and would likely result in more efficient use of the water.

Mr. Groening has requested that Water District review this plan and determine if the project could qualify for some cost sharing within the district.

Respectfully Submitted,

Ron Shurtleff, Watermaster

Smith Ditch Water Users										
Owner of Water Right	Right No.	Basis	Type of Right	Diversion Rate CFS	Priority Date	CFS	GPM	%of Total	Pre-1917 Rights CFS	% of Total
Unimin	1131 B	Decreed	Irrigation	0.26	10/5 1875				0.26	1.24%
Unimin	1131 C	Decreed	Irrigation	1.08	10/5 1875				1.08	5.17%
Unimin	12832	License	Industrial	5.00	4/4 1988	6.34	2,846	23.67%		
Vogel	1131 A	Decreed	Irrigation	0.26	10/5 1875				0.26	1.24%
Vogel	12721	License	Storage	0.60	7/19 1984					
Vogel			Irrigation	0.15	3/9 2001	1.01	453	3.77%		
Smith	5558	Decreed	Irrigation	0.10	10/5 1875	0.10	45	0.37%	0.10	0.48%
Steinebach	1148	Decreed	Irrigation	0.06	10/5 1875	0.06	27	0.22%	0.06	0.29%
Worthington	1148 B	Decreed	Irrigation	0.10	10/5 1875	0.10	45	0.37%	0.10	0.48%
Craig	22352		Irrigation	0.13	2/21 2001	0.13	58	0.49%		
Boise Cascade	65-587	Decreed	Industrial	19.04	6/1 1916	19.04	8,546	71.10%	19.04	91.10%
Total				26.78			12,020		20.90	

Mark Limbaugh

From: "Dave Bolland" <DaveB@ACWANET.COM>
Cc: <wdist65@primenet.com>
Sent: Monday, April 01, 2002 10:38 AM
Attach: TalentFINAL.doc; TalentFINAL_1.wpd
Subject: USEPA Guidance Interpreting the Talent Decision and Use ofAquatic

FYI - Here is the long-awaited USEPA Guidance to address the Talent Decision. It is directed to the USEPA Regional Administrators. As rumored, it seems to focus on the CWA "agricultural exemption" for return flows. However, other uses of aquatic pesticides are not addressed: "EPA is not addressing at this time whether other types of direct applications of FIFRA-registered pesticides beyond the scope of this exemption are subject to regulation under the CWA. Nor does EPA intend for this statement to have any effect on point source discharges of pollutants subject to regulation under the CWA, including, but not limited to, discharges into an irrigation canal that is a water of the United States."

If anything, this document raises more questions than it answers. It also remains to be seen how the regions will implement it and how the state will address it.

Here is the cover note from Norm Semanko & Gayle Batt of the Idaho Water Users Association:

"Late today EPA released its Interpretive Statement and Regional Guidance on the Clean Water Act's Exemption for Return Flows from Irrigated Agriculture ("Guidance"), regarding the aquatic herbicide (Talent Irrigation District case) issue. A copy of the Guidance is attached in both word and
wordperfect formats.

As we have been pushing for, the Guidance provides that the use of aquatic
herbicides in irrigation canals does not require an NPDES permit. The Guidance "clarifies that the application of an aquatic herbicide consistent
with the FIFRA label to ensure the passage of irrigation return flow is a
nonpoint source discharge not subject to NPDES permit requirements under the CWA." The use must be done according to instructions contained in the product's EPA-approved label, is governed by FIFRA, and is exempt from the requirement to obtain an NPDES permit.

Obviously, this is good news and provides a greater level of certainty regarding the use of aquatic herbicides this year. While this will probably not be the last development on this issue, and the Guidance will
be subject to additional interpretation, particularly regarding the scope

of the irrigation return flow exemption, it is a very welcome document.
Please let us know if you have any questions and our thanks to everyone for their patience and cooperation on this difficult issue."

David Bolland
Regulatory Affairs Specialist
Association of California Water Agencies
910 K Street, Suite 100
Sacramento, CA 95814-3577
Telephone: (916) 441-4545
Fax: (916) 325-2306
e-mail: daveb@acwanet.com

MEMORANDUM

SUBJECT: Interpretive Statement and Regional Guidance on the Clean Water Act=s Exemption for Return Flows from Irrigated Agriculture

FROM: Robert E. Fabricant
General Counsel (2310)

G. Tracy Mehan, III
Assistant Administrator for Water (4101)

Stephen L. Johnson
Assistant Administrator for
Prevention, Pesticides, and Toxic Substances (7101)

TO: Regional Administrators
Regions 1-10

In *Headwaters, Inc. v. Talent Irrigation District*, the U.S. Court of Appeals for the Ninth Circuit held that an applicator of aquatic herbicides was required to obtain a National Pollutant Discharge Elimination System (ANPDES≅) permit under the Clean Water Act (ACWA≅) under the circumstances before the court. 243 F.3d 526 (9th Cir. 2001). The Court concluded in that case that the applicator not only needed to comply with the herbicide=s Federal Insecticide, Fungicide and Rodenticide Act (AFIFRA≅) label requirements, but also needed to obtain an NPDES permit. *Id.* The applicator used an herbicide with the active ingredient acrolein in an irrigation canal that was a water of the United States in a manner that was inconsistent with its label instructions. EPA is issuing this interpretive statement and regional guidance to clarify a jurisdictional issue that has arisen in the context of the *Talent* decision.

In the CWA, Congress specifically provided that the definition of Apoint source≅ does not include return flows from irrigated agriculture and provided that the Administrator shall not require a permit for such activity. EPA believes that the application of an aquatic herbicide consistent with the FIFRA label to ensure the passage of irrigation return flow falls within the exemption and is nonpoint source activity, consistent with Congressional intent. The court in *Talent* did not consider the irrigation return flow exemption.

With this statement, EPA clarifies that the application of an aquatic herbicide consistent

with the FIFRA label to ensure the passage of irrigation return flow is a nonpoint source discharge not subject to NPDES permit requirements under the CWA. EPA is not addressing at this time whether other types of direct applications of FIFRA-registered pesticides beyond the scope of this exemption are subject to regulation under the CWA. Nor does EPA intend for this statement to have any effect on point source discharges of pollutants subject to regulation under the CWA, including, but not limited to, discharges into an irrigation canal that is a water of the United States.

As explained more fully below, EPA believes that this interpretation is consistent with the intent of Congress in establishing this exemption in 1977. The Agency also believes that the use of aquatic herbicides for the purposes of ensuring irrigation return flow in accordance with FIFRA label requirements will serve to prevent unreasonable adverse effects on the environment. EPA will continue to use its full authority under FIFRA to ensure that pesticides are not used in ways beyond those intended and approved.

Under FIFRA, pesticide applicators must follow label instructions. These instructions include use restrictions and limitations that EPA deems necessary to ensure the product, when used according to the label, will not result in unreasonable adverse effects on the environment, taking into account both the risks and the benefits posed by use of the product. As part of the registration process, EPA evaluates potential label limitations based on the proposed use instructions for the product (application methods, rates, etc.), and the toxicity and environmental fate data submitted to the Agency in support of the pesticide=s registration. After determining the validity of the submitted data, the Agency evaluates the amount of the particular pesticide that would result in unreasonable effects for plant and animal species other than the pest it is intended to control. If that amount is expected to result from the application, the Agency will determine what measures would reduce that amount, and therefore exposure, to an acceptable level. For acrolein products, the measure to reduce exposure is to keep the treated water on the field or otherwise contained for six days prior to release. The containment period allows the pesticide to degrade so that when the water is released, potential adverse impacts on aquatic species and the environment are minimized.

Statutory Background

In the 1977 amendments to the Clean Water Act, Congress expressly reversed a court decision which would have required an NPDES permit for return flows from irrigated agriculture. Congress accomplished this through two amendments to the CWA. (1) Congress exempted irrigation return flows from permitting: AThe Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture,≅ ∋ 402(l)(1); and (2) Congress excluded return flows from the definition of point source: AThis

term does not include return flows from irrigated agriculture,≅ ə 502(14).[1]

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[1] Congress enacted these amendments to the CWA in response to a court decision that vacated sections of EPA=s 1973 NPDES regulations. *NRDC v. Train*, 396 F.Supp. 1393 (D.D.C. 1975), *aff=d, NRDC v. Costle* 568 F.2d 1369, 1382 (1977). The EPA regulations had exempted discharges from several classes of point sources from the NPDES permit requirement. Among the exempted sources were all irrigation return flows (such as tailwater, tile drainage, surfaced ground water flow or bypass water) from areas of less than 3,000 contiguous acres or 3,000 noncontiguous acres that use the same drainage system. 40 CFR ə 125.4(i) (1973). Following the court decision, which would have *required* NPDES permits for irrigation return flows, Congress acted to *not require* NPDES permits, establishing a statutory exemption for return flows.

The legislative history of these amendments shows that by amending the CWA, Congress intended to ensure a level playing field between irrigated and non-irrigated agriculture. Congress eliminated the disadvantage to irrigated agriculture by providing the irrigation return flow exemption, which primarily benefits irrigated agriculture. This effort was expressed during Senate debate on the amendment as intended to Acorrect[] what has been a discrimination against irrigated agriculture.≅ 3 Legislative History of the Clean Water Act, 1978 at 527.[2] Debate in the House of Representatives noted that A[t]his amendment promotes equity of treatment among farmers who depend on rainfall to irrigate their crops and those who depend on surface irrigation which is returned to a stream in discrete conveyances.≅ 4 Legislative History of the Clean Water Act, 1978 at 882. In the Senate report, the Senate adopted a broad definition of return flow to include Aconveyances carrying surface irrigation return as a result of the controlled application of water by any person to land used primarily for crops.≅ S. Rep. No. 85-370, 95th Cong., 1st Sess. 35, *reprinted in*, 4 Leg. Hist. at 668. The Senate noted favorably the existence of the Section 208 program, which does not require an NPDES permit to address water quality concerns from irrigation return flow: AAll such [irrigation return flow] sources, regardless of the manner in which the flow was applied to agricultural lands, and regardless of the discrete nature of the entry point, are more appropriately treated under the requirements of section 208(b)(2)(F).≅ *Id.*[3] Section 208(b)(2)(F) establishes a non-NPDES program for addressing various nonpoint sources of pollution, Aincluding return flows from irrigated agriculture, and their cumulative effects.≅ 33 U.S.C. ∋ 1288(b)(2)(F). In addition, Section 303(d) of the CWA is a comprehensive program administered by EPA in conjunction with the States that identifies waters that are not meeting water quality standards.

Regulatory Background

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[2] In 1987, Congress further amended the CWA=s definition of point source to exclude discharges of agricultural stormwater. The legislative history of the amendment demonstrates that Congress had assumed that such discharges would be nonpoint source discharges. That assumption explains why Congress was concerned in 1977 that there was discrimination against irrigated agriculture. In 1977, Congress thought that AFarmers in areas of the country which were blessed with adequate rainfall were not subject to permit requirements on their rainwater run-off, which in effect had been used for the same purpose and contained the same pollutants.≅ 3 Legislative History of the Clean Water Act, 1978 at 527.

[3] Congress also recognized the significant burden on EPA and the States associated with issuing permits for all irrigation return flows. For instance, House debate on the legislation indicated that, AThe problems of permitting every discrete source or conduit returning water to the streams from irrigated lands is simply too burdensome to place on the resources of EPA.≅ 3 Legislative History of the Clean Water Act, 1978 at 318.

Consistent with the 1977 CWA amendments and congressional intent, EPA adopted regulations, using language identical to the statutory exemption, that exempt return flows from irrigated agriculture from the NPDES permitting program. See 40 CFR ∋122.2 (AThis term [point source] does not include return flows from irrigated agriculture. . . .≅); ∋ 122.3(f) (AThe following discharges do not require NPDES permits: . . . (f) Return flows from irrigated agriculture.≅). EPA believes that to fully implement congressional intent, the exemption must be broad enough to include the application of aquatic herbicides when necessary to maintain the conveyances and ensure that irrigation water can actually flow. This interpretation ensures that Congress= primary purpose in enacting the exemption is met: irrigated agriculture is not subject to a greater regulatory burden than non-irrigated agriculture.

This is also consistent with the Agency=s longstanding interpretation of Apoint source≅ with respect to silviculture activities. EPA regulations exclude from the NPDES permit requirement Anon-point source silvicultural activities such as . . . pest and fire control. . . .≅ 40 CFR 122.27. EPA=s interpretation has been upheld by courts considering various activities related to silviculture. In *League of Wildlife Defenders v. Forsgren*, pesticides were applied to forested areas through helicopter-mounted pesticide sprayers, which resulted in spray residue in adjacent streams. 163 F.Supp.2d 1222 (D.Ore. 2001)(appeal pending). The court affirmed EPA=s finding that pesticide application falls within the normal course of silvicultural operations and, as a nonpoint source activity, does not require an NPDES permit. Similarly, in *Sierra Club v. Martin*, the court concluded that logging roads for harvesting timber were not CWA Apoint source≅ discharges. 71 F.Supp.2d 1268 (N.D.Ga. 1996). The court noted that Congress and EPA intended to exempt the construction and maintenance of logging roads and most other activities related to silviculture from the NPDES permit program. *Id.* at 1301.

Statement Regarding Application of Herbicides to Facilitate Irrigation

Based on statutory language and Congressional intent, the Agency believes that the exemption for return flow from irrigated agriculture reasonably would include the maintenance through the use of aquatic herbicides of irrigation conveyances as integral to the function of an irrigation return flow system. Specifically, EPA believes that the application of aquatic herbicides consistent with the FIFRA label to ensure the passage of irrigation return flow falls within the scope of the exemption and, therefore, does not require an NPDES permit. Application of herbicides inconsistent with the requirements of FIFRA would not be for the purpose of maintaining irrigation and thus would not be treated as irrigation return flow exempt pursuant to the CWA.[4]

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[4] While neither the district court=s nor the appellate court=s analysis turned on whether the pesticide application in *Talent* was consistent with FIFRA label requirements, the

While EPA believes that Congress intended the exemption to be broad enough to ensure the full functioning of irrigation return flow systems, the exemption is not unbounded. Discharges that are not return flows from irrigated agriculture into irrigation canals that are otherwise subject to permitting requirements would continue to require an NPDES permit. For example, storm water discharge from an industrial facility that Amixes≅ with irrigation return flows prior to addition to waters of the United States would require a permit. Preamble, NPDES Permit Application Requirements for Storm Water Discharges, 55 FR 47990, 47996 (Nov. 16, 1990). This interpretation finds support in the legislative history of the return flow exemption, based on the Senate=s discussion of the word Aentirely≅ in Section 402(l)(1) which prohibits the Administrator from requiring a permit Afor discharges composed entirely of return flows from irrigated agriculture.≅ The Senate stated that the word Aentirely≅ was Aintended to limit the exception to only those flows which do not contain additional discharges from activities unrelated to crop production.≅ 4 Legislative History of the Clean Water Act, 1978 at 668.

Summary of Interpretive Statement

This statement clarifies that the application of an aquatic herbicide consistent with the FIFRA label to ensure the passage of irrigation return flow is a nonpoint source discharge not subject to NPDES permit requirements under the CWA. EPA is not addressing at this time whether other types of direct applications of FIFRA-registered pesticides beyond the scope of

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Agency interprets the factual situation described in the district court=s opinion in *Talent* to constitute a violation of the FIFRA label for Magnacide H. Contrary to the FIFRA label, the pesticide applicator failed to contain the herbicide-laden water for the requisite number of days. Under these circumstances, EPA believes that the applicator would not be able to avail itself of the exemption.

this exemption are subject to regulation under the CWA. Nor does EPA intend for this statement to have any effect on point source discharges of pollutants subject to regulation under the CWA, including, but not limited to, discharges into an irrigation canal that is a water of the United States.

For further information about this statement, contact Jim Jones, Office of Prevention, Pesticides, and Toxic Substances, (703) 305-7565 or Mike Cook, Office of Water (202) 564-0748.