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State of Idaho
DEPARTMENT OF WATER RESOURCES
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December 28, 1994

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

OWEN ORNDORFF
JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

RE: Macks Creek Reservoirs

Dear Mr. Orndorff:

Since our last meeting of July 27, 1994, we have reviewed the portion of the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights" which addresses the administration and delivery of the Reynolds Creek water rights as listed in the proposed finding. The language from this portion of the stipulation was included verbatim in the 1988 Reynolds Creek Decree. As such, it applies to all users in the entire basin.

You indicated during our meeting that measuring device requirements do not or should not apply to the diversions on Macks and Cottle Creeks which are located above the Lower Macks Creek Reservoir. Conclusion of Law #19 in the Reynolds Creek Proposed Findings clearly requires all users of irrigation water rights to install and maintain lockable controlling works and measuring devices at their points of diversion. At no place in the stipulation nor within the final decree can we find language to the contrary. The presence of reservoirs within the Macks Creek drainage does not alter or exempt the measuring device requirement.

You stated that the measuring device requirement needs to be enforced uniformly throughout the Reynolds Creek Water District. We agree. On September 12, we spoke with Watermaster Connie Brandau and asked her where the measuring and/or control device discrepancies were occurring within her administrative area. Besides the Macks and Cottle Creek drainages, there are no devices present on Dobson Creek at the Seven High diversion, on Babbington Creek at the Rueck diversion(s), or on Salmon Creek at the Boston diversion(s), where Junayo Ranch is leasing land. In addition, some devices on the Bass Ranch are unsatisfactory. Ms. Brandau acknowledges that both the Babbington and Salmon Creek drainages are generally dry by the time she is called to duty, but indicates that Macks and Cottle Creeks typically flow for at least a few weeks during the delivery period. On Babbington and Salmon Creeks, devices will be required only if diversions are desired after the Watermaster is called. Measuring device infractions in all other locations will be enforced prior to the 1995 irrigation season.

The determination and regulation of compensatory outflows from Lower Macks Creek Dam based on negotiated flows, as proposed in Carl Myers' letter of July 18, 1994, is not acceptable. Direct accountability of flows through physical measurements is the only practical and equitable method of ensuring priority deliveries. At a certain point as flows diminish each year, the passage of flows through Lower Macks Creek Dam will become futile to the fulfillment of downstream rights, and regulation of Macks Creek may cease at that time. Perhaps a better position to negotiate should be the flow at which a futile downstream call may be determined.

The measuring device requirements for Macks and Cottle Creeks, as set forth in my July 1, 1994 letter still appear to be appropriate. Mr. Myers' letter cites data collected at the Lower Macks Creek Dam site which shows that average runoff flows in March are 6.88 cfs, in April are 6.05 cfs, and in May are 2.47 cfs. If the Watermaster is called to duty on March 15, there can be 4 to 6 weeks of appreciable flows in an average year in the Macks and Cottle Creek drainages which could be delivered, all or in part, to downstream rights. In April alone, at an average rate of flow of 6.05 cfs, 360 acre-feet of water could be generated within the Macks Creek drainage. We consider this to be a significant amount of water which is worthy of delivery.

Further study of the stipulation revealed additional inconsistencies which must be resolved before any new rights are issued to Junayo Ranch. Paragraph 6 of the stipulation states:

> "Junayo Ranch...agrees that its water rights other than No. 57-02325 and No. 57-07040 do not entitle it to divert water to storage during the irrigation season, even thought it may be physically possible to divert water into its storage facilities during the irrigation season, and that no diversion to storage is authorized under their rights Nos. 57-02325 and 57-07040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied."

The intent of this passage is to avoid storage of those irrigation season flows which might be beneficially used downstream in priority order. Diversions authorized under right nos. 57-02325 and 57-07040 from Reynolds Creek have been conditioned by the stipulation and may be regulated at the Reynolds Creek Reservoir diversion. Diversions to storage from Macks or Cottle Creeks during the irrigation season are not presently authorized by decreed rights or permits currently held by you. Without measuring devices, there is no accountability regarding storage within the Macks Creek drainage. Please provide information which would exempt you from the obligation to show accountability for Macks Creek diversions.

Paragraph 5 of the stipulation states:

> "The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987."

Permits no. 57-07525, 57-07532, and application for permit no. 57-07583 were all submitted after October 14, 1987. Each proposes a development or an expansion of a facility which was not in place by June 22, 1987. Please explain why development under these rights would not be in opposition to the stipulation contained within the Reynolds Creek decree as related to new storage development with dates of priority after October 14, 1987.

Unless we are notified to the contrary, we will expect that all required measuring and control devices on Macks and Cottle Creeks be installed at the specified locations within two days after the Watermaster is called to duty. If these devices are not installed, no irrigation diversions from Macks or Cottle Creeks will be allowed by the Watermaster. All available flows will be passed through Lower Macks Creek Dam, based on the Watermaster's best estimate of inflow.

We invite you to submit any further comments or interpretation of this measurement requirement analysis.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Region Office

DRT:ch

cc: Connie Brandau, Watermaster
Carl Myers