STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37M
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Kevin Lakey
Watermaster

October 29, 2008

David R. Tuthill, Jr.
Director of the Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720

Re: Water District 37/37M and Wood River Valley Irrigation District

Dear Director Tuthill:

Thank you for meeting with the directors and representatives of District 37/37M and the Wood River Valley Irrigation District. Among the Districts we represent over 100,000 acres and 1500 water users. We have been very concerned over the water usage and enforcement in the Big Wood basin, and appreciate your willingness to sit down with us and discuss our concerns. We also appreciate the support that the Department has provided to the water master in the recent past, particularly the responses to his inquiries on administration.

As you know, the Big Wood Canal Company and others have requested interim administration in Basin 37, part 3, pending completion of the partial decree for that Basin. As we understand your explanation, interim administration is not appropriate for two, unrelated reasons.

First, in your judgment, there are too many unresolved objections, and based on the SRBA court's decision in Basin 27, it would be inappropriate to undertake interim administration with the large number of outstanding objections in Basin 37, part 3. Second, interim administration of groundwater/surface water under the conjunctive management rules would be hampered by an inadequate model of the Basin to allow the Department to determine the relationship between surface water and ground water sources.

One concern of the District 37/37M water users was administration of surface rights pending the completion of the adjudication in this Basin. You explained that the Department has instructed the water master to administer all surface water in the Basin based upon existing paper rights (decrees, licenses and transfers), and not based on claims of historic practices or claims for additional water made in the SRBA. Once individual rights receive their partial decrees in the Basin, the water master will administer those newly-decreed rights according to the partial decree. We also understand you to affirm that the water master currently has the authority to

require measuring devices and to enforce existing requirements of a water right, including to ensure that a right authorized as a non-consumptive is utilized in a non-consumptive fashion.

The issue of too many objections seems to be based on a numbers exercise. You stated that there were over 600 objections to aesthetic rights alone. In fact, about 60-65 aesthetic rights were objected to, by a group of 10 objectors, those objections were identical. Nevertheless, your staff totaled each objection by each objector to reach a total of over 600 objections.

More important at this time to District 37/37M, based on the instruction to administer surface water in the Basin, is the question of administration of ground water rights. Currently, there is essentially no administration of ground water, not even to determine if supplemental wells are being used as supplemental sources rather than primary sources. You explained that since there is an organized water district in place that District 37/37M could be given the authority to administer groundwater. The process for doing so involves a request from District 37/37M to the Department for an Order granting District 37/37M that authority. You stated that if District 37/37M made such a request you would grant that additional authority. Based on that discussion, the Advisory Board will place just such a resolution before the membership at our annual meeting in January and would appreciate your prompt action on that request.

We also discussed how District 37/37M and the Department would be able to conjunctively administer surface and ground water in the Basin. Some studies of the groundwater in the Basin were conducted in the 1970s, but you indicated they were too dated for the Department to rely upon. You stated that Dr. Brockway is preparing a ground water model to support a pending transfer application. We understand you to say that the Department agreed to process that transfer application (although not necessarily approve the application) if the applicant and Dr. Brockway would make that ground water model available to the Department as the starting point for a basin-wide model. You also stated that the Department's modeling expert, Dr. Alan Wylie, would examine the model and its assumptions. You expected that this model would not be sufficient to allow for conjunctive administration in the Basin without significantly more work. You thought that it would be another 2-3 years before the funding would be available to the Department to begin that modeling exercise for Basin 37.

The District 37/37M Advisory Board is concerned about relying on a model funded by development interests as the foundation for all future decisions about conjunctive administration in the Basin. We are pleased that the Department intends to conduct its own independent review of the model by Dr. Wylie. We do not fully understand how the model could provide sufficient information about potential injury to other water rights to approve or deny an application, if the model at the same time lacks sufficient information to allow conjunctive administration of the same water rights. You indicated that this model would be submitted to the Department by the end of this month. Districts 37/37M request that the Department provide the Advisory Board with that model and all the assumptions that form the basis for the model, upon receipt. Since this model is to serve as the foundation for future administration in the Basin, it is vital that District 37/37M have a thorough understanding of the model and its underpinnings. We also understand that it is an appropriate use of District 37/37M funds to retain a consultant with the necessary expertise to advise the District on the model and its assumptions.

There is an additional source of ground water data that we did not discuss in any detail at the meeting. We hope that the Department is aware of the ongoing USGS study of groundwater in Blaine County funded by the USGS and the local governments. Phase 1 is complete and Phase 2 is expected before the end of the year. We hope that this publicly-funded source of information about the ground water in the upper Big Wood will be considered by the Department and incorporated into the model. Please advise of the Department's intentions concerning the USGS study. We also hope that the data from the 1970s studies can also be considered, where appropriate, by the modeling experts.

Thank you for the opportunity to meet with you and discuss these important issues. We appreciate your willingness to share your valuable time with us.

Very truly yours,

Jerry Vince

Vice Chairman,
District 37/37M
Advisory Board

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