



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

May 15, 2007

Kent W. Foster
Robert L. Harris
Holden Kidwell
1000 Riverwalk Drive, Ste. 200
PO Box 50130
Idaho Falls, ID 83405-0130

Re: Mud Lake Water Users Inc.'s Pump Diversion near Rays Lake and
SRBA Claim No. 31-11951

Dear Kent and Rob,

I have had the opportunity to discuss the issue of the Mud Lake Water Users Inc. (MLWU) diversion pump near Rays Lake with the Idaho Department of Water Resources (Department). The purpose of this letter is to relay to you the Department's position on this matter.

First, I will outline the facts as I understand them regarding MLWU's pump diversion near Rays Lake:

- In the years that it appears that Mud Lake will not fill completely with surface water, MLWU pumps ground water into Mud Lake to meet its irrigation needs.
- One place that MLWU pumps ground water for Mud Lake is at the Bybee Well Field. The Bybee Well Field is located on Camas Creek between Rays Lake and Mud Lake. See attached USGS Topographical Map provided by Rob Harris.
- Ground water is pumped at the Bybee Well Field and then discharged into Camas Creek. The water then flows into Mud Lake.
- Over 35 years ago, MLWU installed a head gate (also sometimes referred to as a dike) on Camas Creek near the outflow of Rays Lake. The head gate is located near the Bybee Well Field.

- When the head gate is open and water is not being pumped from the Bybee Well Field, water will pass from Rays Lake into Camas Creek and down to Mud Lake
- However, when the Bybee Well Field is turned on and ground water from the Bybee Well Field is placed into Camas Creek, the hydraulic head of Camas Creek changes near the headgate. If left unchecked, the water pumped from the Bybee Well Field would flow both to Rays Lake and Mud Lake.
- To prevent ground water from Bybee Well Field from flowing into Rays Lake, MLWU closes the head gate when the Bybee Field is turned on. This action forces the ground water to flow into Mud Lake only.
- Water is stranded in Rays Lake when the head gate is closed.
- About 12 to 14 years ago, MLWU installed a pump on the Rays Lake side of the head gate (MLWU pump). MLWU started pumping water from the Rays Lake side of the head gate to the Mud Lake side of the head gate.
- On July 18, 2006, the Department sent Greg Shenton, Water District 31 watermaster, a letter directing Mr. Shenton to cease diversion of water through the MLWU pump because the pump was not a recorded point of diversion for a water right.
- MLWU holds water rights to surface water from Mud Lake. These rights have been partially decreed in the SRBA District Court. Neither Rays Lake nor Camas Creek are listed as sources of MLWU's surface water rights.

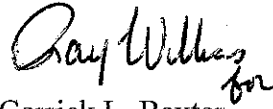
In response to the Department's letter of July 18, 2006, MLWU filed a motion to file a late claim in the Snake River Basin Adjudication (SRBA). The question that has arisen is whether MLWU needs a water right for its operation of the MLWU pump and if so, whether a late claim is the appropriate resolution to the matter.

After discussing the issue, it is the Department's conclusion that MLWU does need to have a water right for the pump. Once the headgates near the Bybee Well Field close, the water system is divided and the water on the Rays Lake becomes a separate source from Mud Lake. As MLWU does not have water rights from Rays Lake or even Camas Creek, any diversion from the Rays Lake side of the headgate will require a separate water right for that particular diversion.

With regards to the late notice of claim filed in the Snake River Basin Adjudication as water right 31-11951, it is the Department's position that a late claim in the SRBA is not appropriate because the pump was installed after the mandatory permit date. As such, it will be necessary for MLWU to file a new application for permit with the Department if they would like to continue to divert water from the Rays Lake side of the headgate using the MLWU pump.

Please contact me if you have any questions or want to discuss this matter further.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ray Williams".

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc. Tim Luke
Lyle Swank
Ernie Carlsen
Don Shaff
Carter Fritschle

