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December 3, 2002

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: Measuring Devices for Surface Water Diversions
Our File No. 4562-12

Dear Karl:

I am writing to you on behalf of our client 6X Ranch, which owns property along the Big Lost River, Warm Springs Creek and Parsons Creek immediately above Mackay Reservoir. 6X Ranch requests that the Department initiate immediate steps to implement its several orders requiring the installation and maintenance of measuring devices and lockable control works for all surface water diversions from streams above Mackay Reservoir.

As you know, concerns about the lack of suitable control and measuring devices at headgates on the Big Lost River have existed for some time. Although the Utah Construction Decree for the Big Lost River included a requirement for all decreed right holders to install and maintain suitable headgates, controlling works and measuring devices at their points of diversion, as of 1991 the Department found that a number of diversions either did not have the required works, or they were inadequate for regulating and delivering decreed water rights. *See Order, In the Matter of Installation of Headgates, Controlling Works and Measuring Devices (March 4, 1991)*. In 2000, in response to a petition, the Department issued a preliminary order (now final) requiring measuring devices and controlling works on Warm Springs Creek and its tributaries. *See Preliminary Order, In the Matter of Requiring Measuring Devices and Controlling Works on Warm Springs Creek and its Tributaries, Part of Water District 34 (April 28, 2000)*. In December of 2001, in response to another petition, the Department issued yet another preliminary order (now final) finding that inadequate measuring devices and lockable control works still existed for certain diversions on the Big Lost River above Mackay Reservoir, and requiring all affected appropriators to maintain suitable headgates and controlling works. *See Preliminary Order Requiring Measuring Devices and Controlling Works on the Big Lost River Above Mackay Reservoir, Water District 34 (December 4, 2001)*.

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Despite these several orders, there still appear to be appropriators on the Big Lost and its tributaries, including Parsons Creek and Warm Springs Creek, who are not complying. To compound the problem, even where control works have been constructed and maintained, there appear to have been instances where deliveries that have been set by the watermaster have subsequently been changed by certain water users. In addition to potential infringement of prior water rights and the resulting impact on crop production that results from the absence of real regulation, there are, and this year have been, significant impacts on the valley's recreation, wildlife and fisheries. Granted, in low water years, these resources suffer as the water users do, but these problems caused by poor runoff are only compounded by lack of oversight of diversions.

The 2002 water year in the Big Lost has been dismal. Mackay Reservoir is empty. Streamflows in the Big Lost and the spring creeks have been very low all summer, and the 2003 water year is expected to be as bad as or worse than this year. In this context 6X Ranch requests that the Department strictly enforce compliance with the above orders.

6X Ranch believes that in exchange for it incurring the expense to comply with the Department's orders, and paying the annual assessments to the water district for regulation, there will be uniform enforcement of the measuring device/control works requirements up and down the river and creeks. 6X Ranch would propose that the Department arrange for its staff, presumably Tim Luke, to inspect the points of diversion on the Big Lost and its tributaries with the District 34 Watermaster prior to the 2003 irrigation season, determine whether the respective diversions are in compliance with the Department's standing orders, and to the extent there are non-complying diversions, notify the water user that the Department's orders will be enforced as to their diversion unless the deficiency is remedied before the Watermaster comes on duty in 2003.

I understand that Department personnel made a limited inspection of the Back Channel area in June of 2002, and that this work was somewhat inconclusive and hampered by the inability to confirm the locations of some points of diversion ("POD"). This work should be continued to completion, and all PODs should be inspected for compliance and their locations should be permanently documented with global positioning or similar technology. Because state agencies such as the Department admittedly are under financial constraints, options for funding this continuing work and uniform enforcement should include the possibility of Water District 34 providing funding through water user assessments.

I will appreciate hearing from you at your earliest opportunity concerning the Department's intentions in this regard.

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Thank you in advance for your consideration of this important matter.

Sincerely,



Michael C. Creamer

cc: Blake Quinn
Doug Rosenkrance
Joline Zollinger

MCC:kdt SAC CLIENTS 4562\12\MCC Letter to Karl Dreher (final) DOC