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DEPARTMENT OF  
WATER RESOURCES

26 May 2004

Mr. Tim Luke  
Water Distribution Section  
State of Idaho  
DEPARTMENT OF WATER RESOURCES (IDWR)  
1301 North Orchard Street  
P.O. Box 83720  
Boise, Idaho 83720-0098  
Phone: (208) 327-7900 FAX: (208) 327-7866

**Re: IDWR Letter of 13 May 2004 concerning "Mitigation for ground water use pursuant to IDAPA 37.03.12.050"**

Dear Mr. Luke:

This correspondence is to inform the IDWR that certain Ground Water Users located within Water District 34 downstream from the Mackay Dam have carefully examined your 13 May 2004 letter referenced above. We wish to inform you that **No Mitigation for Surface Water Rights from these Ground Water users is appropriate or required at the present time** pursuant to the "Water Distribution Rules – Water District 34" IDAPA 37.03.12.050 (Rule 50) and under the current Big Lost River water shed conditions.

I am an owner and operator of a farm located 2 miles south of Mackay with both surface and ground water diversions. I was born and raised on this farm and acquired it in 1977 after my father's death in 1976. I have first-hand experience with the varying water shed conditions of the Big Lost River within Water District 34.

Please understand the following pertaining to Surface and Ground water within Water District 34 below the Mackay Dam:

1. Water District 34 ground water and surface water, as of the date of your letter and continuing through the date of this letter, have not been coupled, connected or affected by any of the water diversions from each other. During the 2004 Irrigation Season to date, characteristically, the Water District 34 underground aquifer ground water flows and the surface water distributions are decoupled entirely. Most would agree that this is due to the accompanying long period of low precipitation (minimal aquifer recharge) condition. In other words, during this extensive drought it has been evident and demonstrated that **no "rising-water" conditions exist** throughout the entire Big Lost River channel downstream from the Mackay Dam to date during the 2004 Irrigation Season. As a result, the flowing underground aquifer is well below any of the surface water streams, canals and diversions. Hence, surface and ground waters are not connected.
2. To quote Rule IDAPA 37.03.12.050 (Rule 50) Paragraph 04.:  
**"Mitigation/Augmentation.** Water users with water rights whose source is Big Lost River with points of diversion downstream from Mackay Dam who seek to have the water supply for their water right augmented to provide for their water right the water supply that would have been available for diversion absent the

diversion of ground water under junior water rights shall request mitigation pursuant to this rule.” **Please note the key phrase: “absent the diversion of ground water.” The 2004 Big Lost River surface irrigation season conditions downstream from the Mackay Dam, to date, would not have improved at all from “absent the diversion of ground water.” Therefore, no mitigation is justified or required. Conditions of the surface-water rights referenced in the 13 May 2004 IDWR letter cannot and need not be mitigated at either the Moore Diversion or the East Side Diversion and no reason exists to try.**

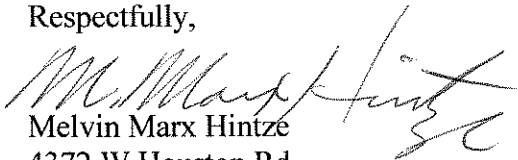
In conclusion, it is to be noted that for the current irrigation season, the rationale for Mitigation of Surface Water Rights by Ground Water Users is not practical or justified following the guidelines of IDAPA 37.03.12.050 (Rule 50) Paragraph 04. Furthermore, even on a year with much greater ground water, surface water user mitigation from ground water users may also have little justification because of the flowing nature of the Big Lost River under ground aquifer, the vast porosity of the alluvial gravels and the lack of an understanding of the relationships between the two systems.

Please inform me of any hearings that are to be held and of decisions making processes concerning the Mitigation of Surface Water Rights by Ground Water Users, as stated in your 13 May 2004 letter referenced above.

This document is the “Written Mitigation Plan” that I am submitting to Water District 34 and IDWR.

If you have any questions or need further information, please feel free to contact me.

Respectfully,



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cc: Mr. Bob Duke, Watermaster, District 34  
IDWR Eastern Region

Mr. Roger Warner  
Water Rights Supervisor  
IDWR Idaho Falls, Idaho Office