

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE)
 PROPOSED CREATION OF A)
 WATER MEASUREMENT DISTRICT)
 FOR THE MEASUREMENT AND)
 REPORTING OF GROUND WATER)
 RIGHTS IN THE UPPER BIG AND)
 LITTLE WOOD RIVER BASINS)
 _____)

COMMENTS OF JOHN F. STEVENSON

Mr. Stevenson attended the August 16, 2011 hearing held at the Wood River Middle School in Hailey, ID. In addition he is submitting the following comments on the proposed creation of a water measurement district for groundwater rights in the Upper Big and Little Wood River Basins.

1. A water measurement district is only an interim step. It provides no method for administration and no method for implementing conjunctive management. Most importantly, water measurement district provides no mechanism for understanding the relationship between groundwater and surface water and among various groundwater rights. For several years the Department of Water Resources has indicated that it is in the process in attempting to evaluate the groundwater resources of the Big Wood River. United State Geological Survey has conducted some important research and has determined that both stream flows and groundwater levels have been declining. It is important that the Department take a long view of the conditions in the Big Wood River Basin to avoid the kinds of problems that have occurred in the Eastern Snake Plain Aquifer. It is important that the Department make every effort to provide the necessary groundwater models so that there can be proper management and administration of the groundwater in the Big Wood Basin. The Department has approved certain transfers on the condition that modeling be made available for this purpose but the modeling efforts seem to have either stalled or disappeared completely. A water measurement district withstanding alone is not particularly helpful unless the Department is willing to, and has the resources devoted to, understanding the groundwater system.

2. While flows in the Big Wood River have been declining, there is evidence that flows in Silver Creek have been increasing. The Department must evaluate the groundwater resources in the Big Wood Basin and in the Little Wood Basin in a way that takes into account the differences in return flows to the Big Wood and Little Wood River and the impacts of groundwater pumping on the stream flows in those sub-basins.

3. At the public meeting, the Department representatives could not explain why the Department was proposing to exclude certain non-irrigation groundwater rights with rates of diversion less than or equal to 0.124 cfs. There seems to be no rational basis to make this

distinction between irrigation and non-irrigation uses. Mr. Stevenson requests that the proposal to exclude non-irrigation use groundwater rights with the rates of diversion less than or equal to 0.124 cfs be eliminated. The diminimus exclusion for domestic and stock water rights is a rate of 0.02 cfs, rather than the amount proposed for these non-irrigation rights which are twelve times the rate.

4. The questions and answers at the public hearing seem to suggest that the Department was not considering municipal rights as part of the groundwater measurement district. However, the attachments to the Notice of Public Hearing indicated that the municipal providers were provided notice of the hearing because their rights would be affected by the proposed groundwater measurement district. Mr. Stevenson strongly urges that the groundwater measurement district include all groundwater rights, including municipal rights. This should not be much of a burden on municipal supplies because they are likely to already have measuring devices in place.

5. A number of questions were raised at the public hearing concerning the extensive water spreading that is taking place in the Big Wood Basin by users of domestic wells who are irrigating far more than their ½ acre they are entitled to utilize under Idaho law. The Department has previously flown the valley and identified all those parcels which do not have water rights which appear to be irrigated through domestic wells or some other illegal irrigation use. The water measurement district appears to be set up so that anyone with a domestic right and the ability to irrigate only ½ acre is categorically exempt, no matter how many acres that they are irrigating. Mr. Stevenson requests that the Department consult its existing bank of information showing those illegal water spread users and require anyone who is irrigating more than ½ acre with a domestic well to also be monitored and included in the water measurement district. That way the Department will have a mechanism for enforcement of illegal water use in the Basin.

DATED this 26th day of August, 2011



Albert P. Barker
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IDWR Southern Region
c/o Allen Merritt
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Re: **Public Comment By:** *Heart Rock Ranch, LLC*
Public Comment To: *Proposed Big Wood Groundwater Water
Measurement District*

Dear Allen:

This firm represents the Heart Rock Ranch, LLC. The purpose of this letter is to provide a public comment to the proposal by the Idaho Department of Water Resources (Department) to form the Big Wood River Groundwater Measurement District.

My client has two basic concerns. Those concerns involve practical issues specific to the formation of a Groundwater Measurement District. Second, and perhaps most importantly, my client is concerned about the intent of the Department to use the Measurement District as a precursor to the formation of a Groundwater District. In particular, it appears as if the Department intends on expanding the current area of the ESPA Area of Common Groundwater Supply to include the Big Wood River Valley, as implicitly or expressly stated in the Director's letter dated August 9, 2011, to water users concerned about Clear Springs Foods' Petition to Amend Rule 50 and the presentation at Hailey on August 16, 2011. I will outline the concerns in these two areas.

A. SPECIFIC CONCERNS ABOUT MEASUREMENT DISTRICT

1. **More Users Should be Included:** The proposal seeks to exclude any non-irrigation ground water user with less than 0.24 cfs of water. Also, it appears that any user with a ground water right for less than 5 acres would be excluded from measurement but maybe not from inclusion in the measurement district. Assuming 0.02 cfs allows a user to irrigate one (1) acre, then any user irrigating five (5) acres or lessor diverting 0.1 cfs (0.02 x 5) would be excluded from measurement within the District. The Big Wood River Valley has many small ranches. These ranches are often five (5) acres or less. The collective water use by these small ranches likely diverts a sizable amount of water, as compared to the total groundwater diverted in the Valley. If the

goal of the Department is determine use of groundwater in the Big Wood River, then the exclusions should be true *de minimums* uses, such as domestic and stockwater users.

2. **Practical Concerns:** My client has artesian wells. Perhaps this is an issues for an *ad hoc* advisory group, but it might be diffuclt and very costly to place measuring devices on artesian wells. There needs to be a process whereby practical concerns, such as artesian wells, are addressed and considered by the Department.

B. CONCERNS ABOUT FORMATION OF GROUNDWATER DISTRICT

It was stated at the public hearing on this matter that the Measurement District is a precursor to the formation of a Groundwater District. This raises many concerns:

1. **Future Administration – the ESPA:** To date, the State has formed the Eastern Snake Plain Aquifer (ESPA) Area of Common Groundwater Supply. This area was formed pursuant to an early groundwater model which currently included in the area within the boundaries of the ESPAM1.1 model. Other areas are being considered for addition to the ESPA under the ESPAM2 model, which has not yet been adopted. I am unaware of any pending study or model that might include the Big Wood River Valley in the ESPA Common Groundwater Area.

As I understand the process, the Department must be able to administer water rights within a groundwater district equitably and according to the appropriation doctrine. This administration can only be accomplished with a calibrated and verified groundwater model. I believe the same requirements apply before the Department conjunctively administers surface and groundwater rights. In this case, the Department lacks any model that would allow it to determine or resolve any administrative issue when a water call is made. Accordingly, even if the Big Wood River Groundwater District was ever included in the ESPA, there is no process by which the Department could administer the rights relative to any water call made in the current ESPA.

2. **Future Administration – Within the District:** The same issues that prevent the Department from administering the Big Wood River water rights within the current ESPA Area of Common Groundwater Water Supply apply to potential administration of groundwater rights within any potential Big Wood River Groundwater District. Again, there is no model for groundwater rights in the Big Wood River Drainage. The lack of any model would prevent the Department from administering the rights within the potential District. It would be appropriate for the Department to model the Big Wood River Drainage, for groundwater rights, before creating any district. Otherwise, as previously indicated, any attempt to administer rights would likely be futile.

3. **Groundwater Modeling Difficulties – e.g. the East-West Divide:** There are many issues the Department will need to address if, and when, it has the resources and time to model the Big Wood River groundwater. For example, as the Department is

aware, it appears as if the aquifer under the Big Wood River drainage below Bellevue is divided into two parts, an east and west divide. This divide roughly separates the Wood River Valley into two different groundwater drainages. The western half of the divide, which includes the Heart Rock Ranch, could never rightfully be included in the ESPA because water in the western half likely never reaches the ESPA Area of Common Groundwater Water Supply. Also, groundwater rights on the east side of the divide would not be connected to the western half, thereby preventing any administration between the two halves. If this divide exists, then my client does not believe it would be appropriate to be included in the ESPA Area of Common Groundwater Supply under any circumstances.

The presence of this divide illustrates the difficulty the Department will have in administering the District, and the potential difficulty it would have in drafting any type of reliable scientific study. These real obstacles must be considered and understood by the Department before the Department acts to create any Groundwater District.

C. CONCLUSION

On behalf of the Heart Rock Ranch, I appreciate the opportunity to comment on the pending formation of the Big Wood River Groundwater Measurement District. I hope that these comments will be considered.

Thank you.

Sincerely,

HAEMMERLE & HAEMMERLE, P.L.L.C.

A handwritten signature in black ink, appearing to read "Fritz X. Haemmerle", written in a cursive style.

Fritz X. Haemmerle

FXH: fxh

cc: client

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Brockway Engineering