

29 April 2013

Mr. Nick Miller
State of Idaho
Dept. of Water Resources
1301 North Orchard St.
P.O. Box 83720
Boise, Idaho 83720-0098

RE: Conjunctive Management of Surface and Ground Water – Water District 34 -
Big Lost River

Dear Mr. Miller:

I am writing this letter as a follow up to our recent conversation concerning water issues in Water District 34. This letter is also written in response to various discussions and the recent meeting concerning conjunctive management of surface and ground water for Water District 34 located within the Big Lost River drainage.

Conjunctive Management of the two distinct water resources presumes that by definition there is a hydrologic relationship existing that joins distinct surface and ground water together (IDAPA 37.03.11.010 (03).)

IDAHO ADMINISTRATIVE CODE Department of Water Resources (IDAPA) presumes by definition for conjunctive management to apply surface and ground water *must have* “**a common ground water supply.**” This is not the situation in the water source presently under discussion. While IDAPA 37.03.12 specifically deals with water in Water District 34, it also states categorically that the Director of IDWR must consider other provisions of State law. Therefore the Director must consider IDAPA 37.03.11 in his evaluation of this request for mitigation. When taken together, **any mitigation request must fail.**

Historically, early in the spring of the year in the Big Lost River drainage and on a non-typical very “Wet” year with high snow melt runoff, with the surface water reaching its “Sinks”, the Surface and Ground water systems are indeed “Conjunctive”. However, during the normal irrigation season, this occurs only for a short period of time and also only under rare circumstances. During this rare event, all Surface Water Rights are “On”, surface water is ample and no reason exists to be concerned about “Conjunctive Management” of Ground and Surface resources. However, importantly, when in any typical or normal irrigation season,

certain “Junior” Surface Water Rights are curtailed and then, the Surface and Ground Water resources have become “Non-Conjunctive.” The data and water usage history show that these two water sources are, in fact, isolated from each other. In other words, no amount of Ground Water Pumping curtailment will increase or improve Surface Water quantity. Because there is no evidence/data, (physical or hydrologic), to show that curtailment of upstream groundwater pumping would result in any increase in surface water availability downstream, the current, or pending, request for mitigation is legally a “Futile Call”, as defined in IDWR’s own IDAPA regulations (37.03.11.010.08). At the irrigation season time this pumping curtailment request is expected to occur, no amount of underground water increase from such curtailment, would make any increase in the availability of surface water downstream from any given pump/pumps, within the Big Lost River drainage.

This technical fact is based upon the slope of the ground water table and the flow rate of the surface water. It has also been historically tested, when in approximately 1958, significant upper drainage surface water curtailment was done, in an attempt to satisfy senior surface water rights in the lower part of the drainage, with no resulting increase shown in the availability of surface water downstream. Such a curtailment was then deemed a “Futile Call” and was equivalent to the current terminology in the IDAPA “Rules for Conjunctive Management of Surface and Ground Water Resources” regulations of a “Futile Call” (IDAPA 37.03.11.010.08).

Specifically, IDAPA 37.03.11 “Conjunctive Management of Surface and Ground Water Resources” states in Page 3, Paragraph 010.08 defining “Futile Call” as:

“Futile Call”. “A delivery call made by holder of a senior-priority surface or ground water right that, for physical or hydrologic reasons, cannot be satisfied within a reasonable time of the call by immediately curtailing diversions under junior priority ground water rights or that would result in waste of the water resource.”

This is also demonstrated by the discernible lack of impact on domestic wells at depths of 20 to 40 feet below the drainage’s surface water source throughout the Big Lost valley when and during the more recent times of the normal irrigation seasons, Junior Surface Water Rights curtailments occur.

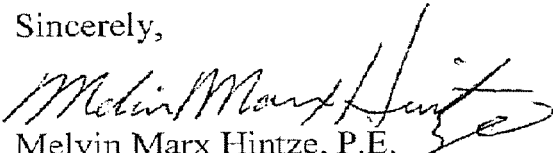
IDAPA 37.03.11 is substantial and in clear detail. Moreover the requesters of mitigation must prove that IDAPA 37.03.12 solely applies and that curtailment of


any ground water pumping would increase available surface water for their need. They cannot accomplish this requirement.

In conclusion, no award of mitigation damages or demand for pumping curtailment is proper, legal or required in the Big Lost drainage under this pending mitigation request. The burden of proof to conclude otherwise in this matter lies solely with the requesters.

Since this is an important issue and of grave concern to the citizens/irrigators of the valley, I request that IDWR promptly keep all of us informed of their actions and any conclusions in this matter.

Sincerely,


Melvin Marx Hintze, P.E.
State of Idaho



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