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RECEIVED
MAY 09 2014
DEPARTMENT OF
WATER RESOURCES

Director Gary Spackman
Idaho Department of Water Resources
322 East Front St.
P.O. Box 83720
Boise, ID 83720-0098

Re: Delivery of Water above the Reservoir in Water District 34

Dear Director Spackman:

I am writing on behalf of the Barton-Chilly Water Users Association and its individual members. I have attached a list of its members, each of whom uses water rights above the Mackay Reservoir and shares in the concern that the water is not being administered above the Reservoir according to the General Provisions of the SRBA Decree.

The purpose of this letter is to ask you, as the Director, and the Water District 34 Watermaster to definitively inform us whether or not the water will be distributed in accordance with the General Provisions during this irrigation season. Of particular concern is whether or not the Watermaster will be required to comply with General Provision 6.c., which addresses curtailment of diversions upstream from the Reservoir which would be futile.¹ The provision reads:

For purposes of determining the amount of water been supplied to Mackay Reservoir from curtailment of diversions upstream from the reservoir, measurements will be made on the Big Lost River at Pense Bridge located in the T8N, R23E, S30, SW1/4NE1/4, and on the Donahue Bridge on Parsons Creek located in the T8N, R22E, S24, SW1/4SE14. These measurements will be used by the Watermaster to make futile call determinations.

The reason we request you state your position is because my clients cannot suffer another year without water they are entitled to under the rights. It became apparent to me during the hearing on the Petition to Remove the Watermaster last fall that General Provision 6.c. is not being followed. Additionally, IDAPA 37.03.12, the Water Distribution Rules for Water District

¹ The second concern is whether or not curtailment of those above the Reservoir will be allowed while some below the Reservoir are rotating water into storage. As I understand the Department has already decided it is not going to allow curtailment if people are rotating into storage. I will not address this concern further. If I misunderstand, please clarify.

34, have not been amended to reflect a requirement to distribute according to that General Provision.

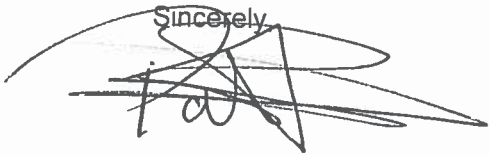
This General Provision, like the others, was the product of intensive negotiations that ultimately led to settlement and acceptance by the Court. It is meant to reflect historical practices where calls from below the Reservoir would be determined by the Watermaster on a daily basis, not through some prolonged, administrative, futile call process. It reflects the actual delivery practices necessitated by the abandonment of the A-line, which was just downstream from the two bridges, but rendered unusable by changes in the Reservoir.

Importantly, my clients, many of whom are now members of Barton-Chilly Water Users, insisted on all of the specific language in the Provision, including the statement that the Watermaster will make the call. They were well aware that the administrative, futile call process would take too long. Consequently, the Decree directs the Watermaster to make the call as part of his regular delivery duties.

For more than a decade, this General Provision has been ignored. We have heard many excuses such as the measuring facilities at the bridges being inadequate, that it might be appropriate to put in another measuring device upstream near the Chilly Bridge, and that the Watermaster is not allowed to follow the General Provision without permission from IDWR first. While my clients are not opposed to other means of administering, they are opposed to the circumvention of the General Provision.

Please let us know at your earliest convenience whether or not IDWR and the Watermaster will follow that Provision this season. I appreciate your attention to this and look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to be "P. Brown", written over a horizontal line.

Patrick D. Brown

cc: Watermaster Todd Perkes

Barton – Chilly Water Users Association Members

1. Mt Springs Ranch
2. Herb Whitworth
3. Dusty and Logan Williams
4. Walt Johnson
5. Sally Johnson
6. Vernon Roche
7. Dan Mulick
8. Steve Bachman
9. Gordon Fulton
10. Carol Donahue
11. Buddy Donahue
12. Brett Zollinger
13. Mark Shoey, No Tellem Ranch
14. Jake Johnson, Churndasher Ranch
15. Dave Stoeikein
16. 6X Ranch, Blake Quinn
17. Dewite Simmons
18. Bitton Family Partnership