



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

March 25, 1997

Mark Limbaugh, Watermaster
Water District No. 65
102 N. Main St.
Payette, Idaho 83661

Dear Mr. Limbaugh:

I have reviewed your letter of March 3, 1997, requesting guidance on the appropriate application of the Water District No. 65 Rental Pool Procedures as they relate to the release of water through the rental pool to augment flows during the migration of Snake River salmon under the provisions of Section 42-1763B, Idaho Code.

As reflected in the enclosures to your letter, the U.S. Bureau of Reclamation on February 14, 1997, assigned to the rental pool 95,000 acre feet of the Bureau's uncontracted reservoir space within the District upon the understanding that the water will be available for release from storage between July 1 and August 1 upon the payment of the \$0.75 per acre foot administrative fee due the District. The Bureau on February 14, 1997, further submitted an agreement to rent 50,000 acre feet of additional water from the rental pool for flow augmentation purposes upon payment of a charge of \$5.40 per acre foot. In transmitting its assignment and rental forms to the District, the Bureau requested that water from Reclamation's uncontracted space be delivered first, followed by rental pool water contributed by other space holders within the District.

You have asked whether under the District's Rental Pool Procedures it is appropriate for the District to first release water from Reclamation's uncontracted space followed by the other rental pool water purchased by the Bureau. You raise this question because ¶ 6.3 of the District's Rental Pool Procedures provides that, "[l]essors who lease Space to the Rental Pool by July 1, shall share proportionally in the proceeds from the rental of Stored Water attributable to such Space."

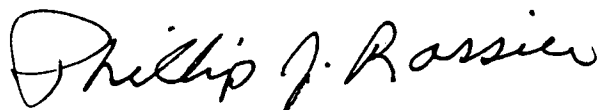
Mr. Mark Limbaugh
March 25, 1997
Page 2

The application of ¶ 6.3 to the Bureau's uncontracted space placed in the rental pool for its own use is not addressed by the District 65 Rental Pool Procedures or by statute. I.C. § 42-1763B(2) does, however, provide that uncontracted space rented by the Bureau through a rental pool is in some respects to be treated differently than contracted space placed in the rental pool. The statute provides that the agricultural preference under the local rental pool procedures relating to the priority to rent water from the rental pool shall not apply to uncontracted space rented by the Bureau. Although § 42-1763B requires the Bureau to rent its uncontracted space through the rental pool prior to release for salmon flow augmentation, the Bureau does not jeopardize its right to use of the water by placing it in the rental pool. Because the Bureau is putting its own storage water through the rental pool in compliance with the statute, it pays only the District's administrative fee of \$0.75 per acre foot for the uncontracted space. There is no reason for a charge in addition to the administrative fee because the Bureau is removing its own water from the rental pool.

In response to your query, it is appropriate for the District to construe ¶ 6.3 of the Rental Pool Procedures not to apply to the Bureau's rental of its own space. Technically, there are no proceeds from the Bureau's rental of this space to be shared among the contributing lessors under ¶ 6.3 because the Bureau is only required to pay the \$0.75 administrative fee charged by the District. This application of the Water District 65 Rental Pool Procedures is consistent with the manner in which Water District 01 applies its procedures to a space holder that rents back its own water from the rental pool.

Please let me know if any further guidance is required. This letter represents an informal review of the issues discussed and is not an official opinion of the Office of Attorney General.

Sincerely,



PHILLIP J. RASSIER
Deputy Attorney General
Natural Resources Division

cc: Clarence Parr, Chairman, IWRB
Karl J. Dreher, Director
Rich Rigby, BOR

WATER DISTRICT NO. 65

102 N. Main St.

Payette, Idaho 83661

Phone (208) 642-4465

Fax (208) 642-1042

E-mail wdist65@primenet.com

RECEIVED

MAR 05 1997

Department of Water Resources

March 3, 1997

Mr. Phil Rassier, Deputy Attorney General
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Dear Mr. Rassier:

Phil

The reason for this correspondence is to clarify our Water District No. 65 Rental Pool Procedures as they pertain to priority of lessors and the subsequent priority of rental of space from the Rental Pool.

The U.S. Bureau of Reclamation has leased to our Rental Pool 95,000 acre feet of uncontracted space in the reservoirs within the District and has rented this space from the Rental Pool, as well as another 50,000 acre feet of space to be leased to the Rental Pool from other spaceholders within the District, for out of basin use (see enclosed leases/rental agreements). The USBR has requested that their uncontracted space be delivered first, followed by the other rental pool water (see enclosed letter). The procedures of the District's Rental Pool address the control and priority of lease and rental of space from the pool. Paragraph 5.8 of our Rental Pool procedures states that all space leased to the rental pool shall be under the control of the Watermaster and the Committee for the duration of the lease. Under Paragraph 6.2, space leased to the rental pool prior to July 1 will be rented before any stored water leased after July 1. Paragraph 6.3 states that lessors who lease space by July 1 will share proportionally in the proceeds from the rental of stored water attributable to such space.

The question is what is the effect of these procedures upon the Bureau's request? Should the uncontracted space share proportionately in out of basin rentals with all other space leased to the Rental Pool prior to July 1? In researching the past, I found that the USBR has replaced their uncontracted space, leased and rented for flow augmentation out of basin, with rental space from other lessors to the Rental Pool, carrying over their uncontracted space into the following year. These actions are inconsistent with their request for 1997.

If you have any questions, please give me a call. I look forward to your reply

Sincerely,



Mark Limbaugh, Watermaster

Enclosures

**cc: Advisory Board
Gary Spackman, IDWR
Sheryl Howe, IDWR**



IN REPLY
REFER TO

PN-3907

WTR-1.10

United States Department

BUREAU OF RECLAMA

Pacific Northwest Region
1150 North Curtis Road
Boise, Idaho 83706-1234

FEB 14 1997



U.S. Department of the Interior
Bureau of Reclamation

CONNIE L. WENSMAN
Water Acquisition

1150 North Curtis
Boise, ID 83706-1234

(208) 378-5317
FAX (208) 378-5305

Mr. Mark Limbaugh
Watermaster
Water District 65
102 North Main
Payette ID 83661

Subject: 1997 Payette River Water Supply Bank

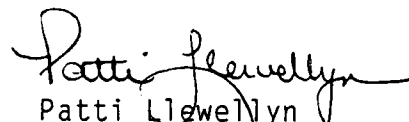
Dear Mark:

Enclosed are the completed documents to fulfill our request to put 95,000 acre feet of uncontracted water for \$0.75 per acre foot into the Payette District #65 Rental Pool for flow augmentation purposes in 1997.

Also enclosed is the signed agreement to rent 50,000 acre feet of water for \$5.40 per acre foot from Water District #65 Rental Pool for 1997. We request that water from Reclamation's uncontracted space be delivered first, followed by rental pool water. We will coordinate with your office the timing and actual quantities as the season progresses.

Enclosed are three signed copies of our Application to Assign Water, and the notarized Water Bank Lease Agreement. We require that two original copies with original signature be returned to this office at the above address, Attention: Connie Wensman, Code PN-3907. Receipt of these two copies will authorize our payment of the deposit less the amount of carry over funds.

Sincerely,


Patti Llewellyn
Lands and Recreation

Enclosures

Payette River Water Supply Bank
LEASE OF WATER TO WATER SUPPLY BANK
For 19 97 Irrigation Season

Mail or Deliver to: Watermaster
Water District 65, Payette River

Dear Watermaster:

Bureau of Reclamation has a storage contract for stored water
(Name of Organization or Individual)

from Cascade and Deadwood Bureau of Reclamation
(Name of Reservoir) (Name of Organization or Individual)

hereby assigns 95,000 Acre-Feet of storage space/water to the Payette River Water Supply Bank for the 19 97 irrigation season. This lease is made pursuant to the Payette River Water Supply Bank Procedures approved by the Idaho Water Resource Board. By this lease you are made the agent of this organization/individual for the rental, delivery, and collection of monies for the above-described water. This lease is made with the understanding that if this water is not rented from the Water Supply Bank in the above-referenced year, the storage space/water will revert to the leasing organization/individual at the end of the irrigation season in that year.

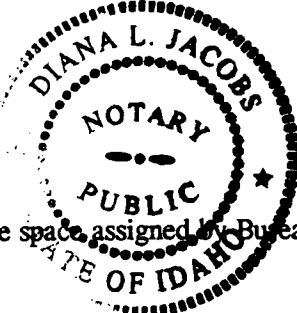
Dated this 14th day of February 1997.
Patti Llewellyn, by Program Manager, Lands and Recreation
(Name of Organization or Individual) (Title)

1150 North Curtis Road
Boise ID 83706-1234
(Address of Organization or Individual)

State of Idaho)
County of Ada)

On this 14 day of February, 1997, before the undersigned Notary Public in and for said county and state, personally appeared Patti Llewellyn, known to me to be the person whose name is subscribed to within instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first written.



Diana L. Jacobs
Notary Public in and for Idaho
Residing at: Boise
Commission Expires: 5-23-2000

The space assigned by Bureau of Reclamation was accepted by me on _____, 19____.

_____, Watermaster

Payette River Water Supply Bank
AGREEMENT TO RENT WATER FROM WATER SUPPLY BANK
FOR 19 97 Irrigation Season

The Committee of Water District 65, being authorized pursuant to Idaho Code Section 42-1765 to lease stored water from water users who own reservoir space and have excess supplies, and to rent said water to requesting parties, does agree to rent to U.S. Bureau of Reclamation (entity), 95,000 Acre-Feet of water requested for Flow Augmentation (use). This agreement is subject to the adopted Procedures of the Payette River Water Supply Bank and execution of same by the party herein named.

Upon receipt of \$ 71,250.00 and the information requested below, the Payette River Watermaster will release to you from storage, at the rate you specify, 95,000 Acre-Feet of stored water between July 1 and August 31.

Description of point of diversion: CASCADE OUTLET, DEADWOOD OUTLET

Located in _____ 1/4 _____ 1/4, Sec. _____, T. _____, R. _____;

Other: _____

On source _____ Pump H.P. _____ Lift _____

Headgate _____ (canal name if appropriate)

Description of place of use: INSTREAM PAYETTE RIVER

Legal Description: _____

Total number of acres irrigated: _____

Patti Jewell, by Program Manager, Lands and Recreation
(Name of Organization or Individual) (Title)

1150 North Curtis Road

Boise Idaho 83706-1234 Dated this 14th day of February 1997 (Address of Organization or Individual)

State of Idaho)

County of Ada)

On this 14 day of February 1997, before me the undersigned Notary Public in and for said county and state, personally appeared Patti Jewell, known to me to be the person whose name is subscribed to within instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first written.



Notary Public in and for Idaho

Residing at: Boise

Commission Expires: 5-23-2000

I have accepted the request of Bureau of Reclamation to purchase water from the Water Supply Bank
this _____ day of _____, 19 ____.

_____, Watermaster

Payette River Water Supply Bank
AGREEMENT TO RENT WATER FROM WATER SUPPLY BANK
FOR 19 97 Irrigation Season

The Committee of Water District 65, being authorized pursuant to Idaho Code Section 42-1765 to lease stored water from water users who own reservoir space and have excess supplies, and to rent said water to requesting parties, does agree to rent to U.S. Bureau of Reclamation (entity), 50,000 Acre-Feet of water requested for instream (use). This agreement is subject to the adopted Procedures of the Payette River Water Supply Bank and execution of same by the party herein named.

Upon receipt of \$ 270,000.00 and the information requested below, the Payette River watermaster will release to you from storage, at the rate you specify, 50,000 Acre-Feet of stored water between July 1 and August 31.

Description of point of diversion: CASCADE DAM, DEADWOOD DAM

Located in _____ 1/4 _____ 1/4, Sec. _____, T. _____, R. _____;

Other: _____

On source _____

Headgate _____ (canal name if appropriate)

Description of place of use: PAYETTE RIVER

Legal Description: _____

Total number of acres irrigated: _____

Patti Leavelle, by Program Manager, Lands and Recreation
(Name of Organization of Individual) (Title)

1150 North Curtis Road

Boise Idaho 83706-1234

(Address of Organization or Individual)

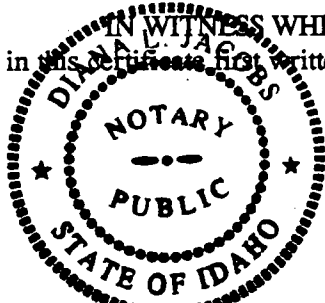
Dated this 14th day of February, 1997

State of Idaho)

County of Ada)

On this 14 day of February, 1997, before me the undersigned Notary Public in and for said county and state, personally appeared Patti Leavelle, known to me to be the person whose name is subscribed to within instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first written.



Diana R. Jacobs

Notary Public in and for Idaho

Residing at: Boise

Commission Expires: 5-23-2000

I have accepted the request of Bureau of Reclamation to purchase water from the Payette River Water Supply Bank this _____ day of _____, 19 ____.

_____, Watermaster