



State of Idaho
DEPARTMENT OF WATER RESOURCES

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CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 14, 1994

Jay Hulet
HC 79 Box 2020
Murphy Id 83650

RE: Adding Maintenance Assessments to the Proposed Lateral Water Users Association on Murphy Mutual Canal

Dear Mr. Hulet:

I am responding to your letter dated February 23, 1994, in which you proposed to add canal maintenance assessment responsibility language to the draft Articles of Association for the proposed Murphy Mutual Canal Lateral Water Users Association.

It is my understanding that the topic of maintenance assessments for the Murphy Mutual Canal has been the subject of previous judicial review. Accordingly, when you, Paul Nettleton and I discussed the potential formation of a Water Users Association on the ditch bank last summer, I indicated that the Department would **not** be involved in attempting to resolve the maintenance payment dispute. I have held to the position that formation of a Lateral Water Users Association could realistically address the water delivery problems for which you sought assistance last year, but I do not see such an organization being able to resolve the long-standing canal maintenance dispute between you and Mr. Nettleton. Accordingly, item 8 of my letter dated October 5, 1993, explicitly reiterates that canal maintenance is not intended to be a function of this proposed Lateral Water Users Association.

I agree with your assessment that pursuant to §42-910, I.C., a lateral water users association can serve as the mechanism for assessing and collecting maintenance costs. In fact, I recently assisted in the formation of such an organization in the Payette River basin where canal maintenance is fully addressed. However, in your particular situation the issue of maintenance costs has already been the subject of court action. Adding this disputed aspect to the proposed association would serve to complicate the already-difficult task of delivering water equitably from this canal. It was my understanding that you had agreed to this concept at our ditch-bank meeting last year.

If you insist on including maintenance assessments in the Articles of Association, I envision little likelihood of this organization being approved or becoming successful. Accordingly, if you choose to adopt such a position I will recommend that the Department cease its involvement in attempting to establish a Murphy Mutual Canal delivery

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organization. In such a case, we would instruct the Watermaster to deliver proper flows into the canal and the Murphy Mutual Canal Co. shareholders would continue to be responsible for delivery from the canal, as in previous years. In hopes that you will not insist on this addition to the Articles, I will make only limited distribution of this letter, and will request that you respond to this office with your intention in this regard no later than March 25, 1994.

Sincerely,



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

cc: Norm Young