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SEP 09 2004

DEPARTMENT OF  
WATER RESOURCES

Sept. 3<sup>rd</sup>, 2004

Gary Spackman  
Dept. of Water Resources  
1301 N Orchard St  
Boise, Id.

Mr. Spackman:

- The basis of my request was two-fold:
- 1) I needed time to find a mitigation plan
  - 2) I was uncertain whether to file for mitigation

The hearing provided both an opportunity to mitigate and the information I needed to make my decision.

Thank you for hearing my request.  
I prefer informal methods of discussion  
to structured forum.

Sincerely,

Bruce Blockner



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

August 24, 2004

GRANITE TRUST ORGANIZATION  
C/O LAWRENCE BABCOCK TRUSTEE  
PO BOX 66  
MOORE ID 83255

Re: Distribution of Water to Water Right Nos. 34-372 A, 34-372B, and 34-690B;  
Big Lost Curtailment 2004

Dear Mr. Babcock:

On August 2, 2004, you petitioned the Idaho Department of Water Resources (IDWR) for reconsideration and requested a hearing in response to an Order for Distribution of Water, issued on July 12, 2004, and reissued as Amended Order, Order to Show Cause, and Notice of Status Conference by the Director of IDWR on July 23, 2004. The order required mitigation for depletions to the Big Lost River caused by ground water diversions or, alternatively, cessation of ground water pumping. IDWR mailed you a copy of the orders.

An enclosure included with the copies of the orders mailed to you stated the following:

Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

See Idaho Code § 67-5247; IDAPA 37.01.01.740.02.a. I've included another copy of the enclosure. The enclosed document describes other remedies available to you.

The amended order was issued July 23, 2004. You timely petitioned for reconsideration. The deadline for the Director of IDWR to address your petition for reconsideration is August 24, 2004. The Director will not rule directly on your petition for reconsideration. On August 25, 2004, your petition for reconsideration will be denied by operation of law.

However, your request for hearing creates a contested case before IDWR. At the hearing, IDWR will record testimony from sworn witnesses and will consider documentary evidence submitted as exhibits. At present, IDWR has received five requests for hearing: the law firm of Rigby, Thatcher, Andrus, Rigby & Moeller, on behalf of the "Water District 34 Groundwater Users and Water Right Holders;" Bruce Blackmer; Ryan & Ruth Genae McAfee, Tony Alosi;

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and Granite Trust Organization, Lawrence Babcock, Trustee. Other requests or petitions for intervention may be forthcoming.

Please submit to me by September 10, 2004, dates you are unavailable in November 2004. I will schedule a hearing based on your submittal. At the same time, please suggest schedules for discovery, exchange of information, and prehearing motions.

As an alternative to a hearing, I have committed to the water users of Water District No. 34 that I will meet with them at least once a month at their request. If you think there is a more informal method of presenting your information, I will consider your suggestions for a less structured forum. You should also suggest how your request for hearing should be addressed if informal presentation is preferred.

Even though a contested case is pending and a hearing will be held, you must participate in a mitigation plan or your ground water diversion will be immediately curtailed. A copy of this letter is being sent to the watermaster to keep him informed.

If you have any questions about any of the matters I've discussed above, please call me at (208)-327-7900.

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman". The signature is fluid and cursive, with the first name "Gary" and last name "Spackman" clearly legible.

Gary Spackman

2 Enclosures

cc: IDWR Eastern Region  
Bob Duke, Watermaster, Water District No. 34

**EXPLANATORY INFORMATION  
TO ACCOMPANY A  
FINAL ORDER**

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
  - (a) the petition for reconsideration is disposed of; or
  - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.