



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE  
Governor

December 14, 2004

KARL J. DREHER  
Director

DE ANN JENSEN  
3300 N KING MTN RD  
MOORE ID 83255

Dear Ms. Jensen:

Thank you for your letter dated November 11, 2004. In your letter you state that you believe ground water and surface water are "so closely related they are actually the same." You ask why the Idaho Department of Water Resources ("IDWR") can recognize a futile call when surface water cannot be delivered but the surface water percolating into the ground contributes to ground water.

Surface water and ground water in the Big Lost River Basin is hydraulically connected. Because of the hydraulic connection, holders of senior priority surface water rights should not be injured by depletions to surface water flows caused by diversions by holders of later priority ground water rights. Inherent in this statement is that the surface water right describes a surface water source and the holder of the right has a reasonable expectation that his water right be delivered from the source described by the right. In other words, the surface water right holder should not be required to drill a well and pump ground water to satisfy his surface water right. Even though conjunctive management recognizes the relationship between the surface water and ground water, the source of the water or purposes of delivery has not changed.

This same reasoning applies to the doctrine of futile call. A person owning a very senior priority surface water right cannot expect delivery of his surface water for recharge, even if he owns a later priority ground water right that would benefit from the recharge. With respect to the surface water source, if water is not deliverable to the earliest priority senior right holder, the doctrine of futile call requires delivery of the surface water to the next in line priority surface right holder. Otherwise, holders of ground water rights with priority dates later than the next in line surface water right would receive the benefits of the surface water. This would be a violation of the prior appropriation doctrine.

Sincerely,



Gary Spackman

Enclosure

Cc: IDWR Region