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November 26, 1996

Mr. Tim Luke
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83702

Re: Aqua Life Call

Dear Tim:

This letter will confirm our telephone conversation this morning regarding the status of the Aqua Life call and Gary Spackman's November 21, 1996 letter. Apparently, the Spackman letter was sent out as a result of your conversation with Mr. Ellis in early November regarding the status of the Aqua Life call. You indicated that Mr. Ellis verbally indicated a desire to renew his April 1996 call. However, you told Mr. Ellis that the call must be set forth in writing in order that the Department can assure itself that the water called for can be put to beneficial use. Therefore, as of today, November 26, 1996 there is no valid call for water out of Billingsley Creek to fulfill the claimed rights of Aqua Life.

Further, you indicated that Mr. Spackman did not clearly understand the Department's intent on requiring a written demand from Mr. Ellis. However, the Department did want to give adequate notice to those users that might be impacted. Given that there is not a valid call in place and it is impossible to know when, or if a written call will be made, these users identified in the Spackman letter can not be expected to take action, legal or otherwise on a mere possibility of a call being made. Buckeye Farms would expect that the two week notice given in the Spackman letter will be applicable, if and when a call is made. If Buckeye were to take unnecessary action and incur costs that otherwise would not have been required, i.e. legal action or removal of fish from its ponds, it might give rise to legal action.

Additionally, Buckeye has concerns over the response of the Department to a valid call by Aqua Life. Until now the Department has viewed the Aqua Life call as a Water district 36A call, rather than a call that might involve the aquifer. However, in looking at the facts, Buckeye finds it difficult to support that proposition. Aqua Life has claims in the SRBA for 150 cfs (SRBA recommendation 112 cfs) from Billingsley Creek. You indicated that flows in Billingsley Creek are approximately 35-36 cfs. If Aqua Life calls for the

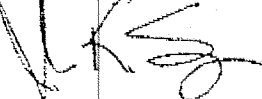
delivery of its water pursuant to the rights, the water in Billingsley and assorted springs feeding the area may not fulfill the right. Therefore, doesn't the Department have the obligation to look further than simply the surface rights identified for the fulfillment of the right. Further, wouldn't Aqua Life have the obligation to follow any and all administrative rules in place?

With respect to the Aqua Life rights, there are real issues whether the rights are valid and whether water diverted pursuant to the rights can be put to beneficial use. If the Department shuts down a user who is beneficially using the water to satisfy a call for which the water will not be used beneficially, damage issues are going to arise. Moreover, Buckeye has diverted its twenty (20) cfs non-irrigation right for at least the last five years without dispute. Further, DEQ records indicate that Aqua Life has utilized only a portion of the rights claimed. The portion of the rights used may have been restricted to certain ponds and certain sources, thereby giving rise to the issues of either partial or total forfeiture of a particular right(s). Basin-wide #10 appeal will assist the Department in addressing these issues. These arguments could not have been raised in the SRBA because until recently sufficient data was not available. However, sufficient data periods have now been developed in support for these propositions. These facts give rise to an entitlement on behalf of Buckeye to this water. If necessary Buckeye intends to file the appropriate action in state court to prevent the loss of water. The Department should review records on file with DEQ prior to taking any action with respect to a call. Further, Aqua Life's SRBA claims should be reviewed and the recommendation reassessed.

With respect to water management of the resource, I have instructed my client to make sure that it is not taking more water than the right allows.

In summary the November 21, 1996 letter sent by Gary Spackman has created a great deal of confusion on the status of water in Billingsley Creek. Based upon the Department's acknowledgement of the letter's erroneous position, Buckeye will not take any further action in response to the letter at this time, but will instead wait for adequate notice by the Department if further action is taken by Aqua Life.

Sincerely,



John K. Simpson

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