



State of Idaho  
DEPARTMENT OF WATER RESOURCES

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PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

December 20, 1996

John K Simpson  
Rosholt Robertson & Tucker  
PO Box 2139  
Boise ID 83701-2139

Re: Buckeye Farms Water Right Permits 36-07742 & 36-08730,  
Conditions of Approval under Permits and Agreement of July 18,  
1988

Dear Mr. Simpson:

We have reviewed the above referenced permits in response to the AquaLife calls of December 6, 1996. Both permits contain conditions of approval that subject the rights to the agreement dated July 18, 1988 between the right holder, Buckeye Farms, Inc. and certain protestants. A copy of this agreement is enclosed for your reference.

The purpose of this letter is to direct your attention to provisions of the agreement regarding Buckeye Farms' rates of diversion to the Curren Ditch and Billingsley Creek by-pass flows during a specific period of the year. In particular, paragraph I(A) of the agreement states:

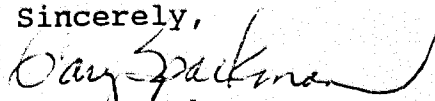
Buckeye (Farms) agrees to divert only 10 cfs of its water rights between February 1 and May 15 of each year so that the remainder of its water rights will be left in Billingsley Creek as a bypass flow for instream flow purposes or for diversion to nonconsumptive uses by others so long as the water is returned to Billingsley Creek immediately below the place of use.

The Department must consider this agreement when advising the watermaster of Water District 36A about distribution of water from Billingsley Creek. Recent correspondence to the watermaster in response to the AquaLife calls did not address this agreement. We intentionally omitted any reference to this agreement because it only requires bypass flows between February 1 and May 15. We were concerned that any direction to the watermaster at this time relative to the Buckeye agreement may be premature.

We wish to notify you of the existing agreement and that IDWR may require enforcement of the agreement as it pertains to the specified rate of diversion and bypass flow between February 1 and May 15. We expect that there may be some questions about

diversion rates and bypass flows during the period that overlaps the irrigation season. We would be happy to discuss this matter with you further.

Sincerely,



Gary Spackman

cc: Buckeye Farms, Inc.  
George Lemmon, Watermaster