



State of Idaho

DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

November 14, 2006

Mr. Tim Eilers
1109 W., 300 S.
Heyburn, ID 83336

RE: Clarification of Enlargement Acres in A&B Irrigation District

Dear Mr. Eilers:

I am responding to your letter dated September 21, 2006 in the above-referenced matter. I apologize for the delay in response, which is due to our intense focus to complete Director's Report recommendations for the remaining sub-basins in the Snake River Basin Adjudication (SRBA).

Your letter provides insightful questions regarding the impact of converting acres from ground water to surface water, and the relationship of these acres to the acres irrigated via enlargement claims that have been recommended in the Director's Reports in Basin 01 Part 1, for which the objection deadline was October 6, 2006.

One of the challenging aspects of the SRBA is that the water rights are being decreed as they existed *on the day of commencement of the SRBA, November 19, 1987*, but in some cases significant changes in water delivery have occurred in the past nineteen years. Thus, we must review the SRBA process in light of the 1987 data, while reviewing mitigation plans based on present on-the-ground situations.

This issue is too complex, multi-factorial and subject to change for me to develop a complete and final response to the questions that you have raised. Proceedings in the SRBA and reviews of mitigation plans will hinge on factors that you have raised and a host of other factors. Nevertheless, I am forwarding your concerns and observations about the impact of converting acres relative to mitigation plans to those in our office who review such plans.

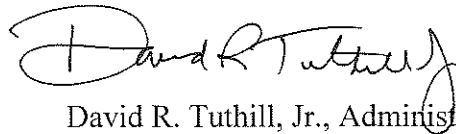
In addition, in response to your question about objecting to the Director's Report recommendations in the SRBA, I note that the Director's Report recommendations that you have identified in your letter received timely objections from the United States, IGWA, Inc., and several water delivery organizations. You can see the status of these filings on the SRBA Court website by navigating to the DISPLAY SUBCASE SUMMARY REPORT at <http://www.srba.state.id.us/SREPT.HTM> and providing one of

Tim Luke ✓
WD130 File 2006

the water right numbers of interest, for example 1-10225. We are now in the 60 day response period and any party to the SRBA has standing to file a response and thus be included in the resolution of the objections. Each claimant in the SRBA is a party with requisite standing, so based on your being a claimant in the SRBA for your domestic water right, you could file a response to this action if you wish. The Response to Objection, Standard Form 2 and associated instructions, are also available on the SRBA Court website. The deadline for responses for the Basin 01 Part 1 recommendations is December 8, 2006.

As we navigate through this complex issue your input will be carefully considered. Please feel free to provide additional information and make additional inquiries during this process.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Tuthill, Jr.", written in a cursive style.

David R. Tuthill, Jr., Administrator
Water Management Division

Cf w/copy of Eilers Letter:

Allen Merritt
Cindy Yenter
Lyle Swank
Michael Holliday
Tim Luke
Gary Spackman
Chris Ketchum, BOR, Burley

September 21, 2006
1109 W., 300 S.
Heyburn, Idaho 83336

SEP 25 2006

DEPARTMENT OF
WATER RESOURCES

David R. Tuthill, Jr., Administrator
Water Management Division
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

RE: Clarification of enlargement acres in A & B Irrigation District

Dear Mr. Tuthill,

Thank you for your September 7, 2006 letter and the attached copies of A & B Irrigation District's surface water rights recommended by IDWR. Your letter was in response to my letters of April 18, 2006, and August 25, 2006, to Karl Dreher, Director of IDWR giving notice that A & B Irrigation District made an enlargement of the acres irrigated under surface water rights held by the BOR by converting lands having ground water rights to surface water. In your letter, the analysis of the acreage involved in the total enlargement acres warrants clarification.

If we first focus on the 1,377.8 acres converted to surface water, you will find these acres mentioned on page 3 in the Mitigation Plan submitted by A & B Irrigation District to the Director for approval and received by IDWR on May 16, 2005. These acres were previously irrigated with a 1948 ground water right held by the BOR and reported in Basin 36. The Mitigation Plan explains that this conversion would assist in offsetting irrigation diversions caused by the District's enlargement of its ground water right.

These 1,377.8 conversion acres should not be confused with the surface water right enlargement acres reported in the Director's Report for Basin 01. These surface water enlargement acre rights (1-10225, 1-10237, 1-10238, 1-10239, 1-10240, 1-10241) total 1,286.9 acres and are junior to right 1-14 which is "limited to the irrigation of 14, 637 acres..... in a single irrigation season." Individual landowners installing sprinkler systems or other more efficient means of irrigation was the main reason for this enlargement of 1,286.9 acres.

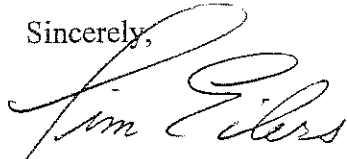
These two different surface water enlargements (1,286.9 acres caused by landowners and 1,377.8 acres resulting from conversion of ground water irrigation to surface water by the District) total 2,664.7 acres. When adding these acres to the 14,637 acres, the total acreage irrigated from the Snake River by the District is 17,301.7 acres - as reported to the Director and to IDWR staff.

Your letter appears to indicate that until the "SRBA Court issues partial decrees for these water rights," the IDWR does not have "the basis for determining if the number of acres receiving surface water exceeds the numbers of acres authorized to receive surface water." However, the above figures and related documents may provide sufficient basis.

If IDWR proposes waiting for court action, please explain how the SRBA Court would adjudicate these 1,377.8 acres that A & B District has asserted it has converted to surface water from ground water rights that were decreed in the Basin 36. Also, I would like to be informed how water users, injured by the District's enlargement (conversion) of these 1,377.8 acres to the surface water source, would file an objection in the SRBA Court or with IDWR to this enlargement.

I hope the above clarification of this matter is helpful. I believe the deadline to file objections to the Basin 01 Report in the SRBA Court is October 6, 2006.

Sincerely,

A handwritten signature in cursive script that reads "Tim Eilers". The signature is written in dark ink and is positioned above the printed name.

Tim Eilers, Landowner, A & B Irrigation District

Pc: Allen Merritt
Cindy Yenter
Lyle Swank
Michael Holliday
Chris Ketchum, BOR, Burley