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December 21, 2018

VIA EMAIL AND REGULAR MAIL

James Cefalo
Idaho Department of Water Resources
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718
James.Cefalo@idwr.idaho.gov

RECEIVED
DEC 26 2018
DEPARTMENT OF
WATER RESOURCES

Re: *In the Matter of the Proposed Revision of Boundaries of Water District No. 33, Little Lost River and Tributaries, To Include Ground Water Rights Within Water District No. 33; Written Comments from Pancheri, Inc. and Pancheri Brothers LLC.*

Dear Hearing Officer Cefalo:

Holden, Kidwell, Hahn & Crapo, P.L.L.C. has been asked by Pancheri, Inc. and Pancheri Brothers LLC (hereinafter collectively "Pancheri") to submit written comments concerning the proposed actions of the Director of Idaho Department of Water Resources (the "Department") in the above-entitled matter. You have been designated as the hearing officer in this matter. The *Notice of Public Hearing* provides that "[w]ritten comments may be submitted to the hearing officer at the hearing or at any time prior to the close of the written comment period on December 24, 2018." However, the *Notice of Public Hearing* goes on to state that "[w]ritten comments not presented at the hearing should be sent to the Director, Department of Water Resources, PO Box 83720, Boise, Idaho, 83720-0098." It is therefore unclear whether this letter should be addressed to you or the Director because these comments were not presented at the hearing but are being submitted before the close of the written comment period. To ensure we comply with the *Notice of Public Hearing*, we are addressing these comments to you as the hearing officer with a copy to the Director.

It is my understanding that at the public hearing on this matter, the Department representatives explained that this is the first of a planned series of administrative actions of the Department to better regulate and measure ground water diversions from wells located in administrative basin 33, which will culminate in an order requiring installation of measuring devices on most ground water diversions similar to other orders recently issued by the Department. See, e.g., *Final Order on Reconsideration*, In the Matter of Requiring Measuring Devices for Ground Water Diversions In Water Districts Nos. 31, 34, 100, 110, 120, 130, and 140, July 20, 2016 (requiring devices to be installed before the 2018 irrigate season for irrigation diversions, and on or before January 1, 2018 for non-irrigation diversions); *Preliminary Order*, In the Matter of Requiring Measuring Devices For Ground Water Diversions In the Water District No. 100 Area

of Expansion (Rexburg Bench Area), September 12, 2017 (requiring devices to be installed before the 2019 irrigate season for irrigation diversions, and on or before January 1, 2019 for non-irrigation diversions).

Pancheri irrigates its properties with both surface water and ground water within administrative basin 33. In order to exercise its ground water rights, Pancheri owns and operates many wells. Pancheri understands the need to properly measure and account for water diversions. The Department's position is that "[e]xtending WD33 administration to all ground water rights in the Little Lost River drainage, as opposed to the creation of a separate water district for ground water rights, creates a more efficient administration and regulatory scheme." *Notice of Public Hearing* at 2.

Pancheri is without sufficient information at this point to evaluate whether it is preferable to have a single watermaster over both surface and ground water diversions. In theory, having a single individual watermaster serve a dual role over both surface water and ground water will only require employment of a single person, but that assumes that the current watermaster has capacity (time) to perform both functions. If the watermaster does not have capacity, then it is likely that he will hire other personnel or deputy watermasters to measure ground water diversions, and in that case, such an arrangement would be no different than the Department having separate water districts each staffed with its own watermaster. Because Pancheri does not know if the current watermaster has such capacity, it is neutral on the Department's intent to include ground water diversions within the currently-existing Water District No. 33.

Pancheri is mainly concerned with the potential time frames that may be established by the Department in relation to the current action, specifically the time frames that may be established for requiring installation of measuring devices on its wells.

As this is the first in a planned series of administrative actions of the Department to better regulate and measure ground water diversions from wells located in administrative basin 33, which will culminate in an order requiring installation of measuring devices, Pancheri requests and any such order for ground water diversions in Water District No. 33 not be issued until **2020**.

Additionally, when such order is issued, Pancheri requests that it includes a time frame of **at least eighteen (18) months** from the issuance date of the order to have the measuring devices installed. This 18-month time frame is consistent with the above-referenced ground water measurement orders issued for the Eastern Snake Plain Aquifer and the Rexburg Bench area. For example, if a measuring device order for ground water diversions in the Little Lost area is issued on July 31, 2020, ground water irrigators should have until the beginning of the irrigation season of 2022 to have the devices installed (with non-irrigators subject to a January 1, 2022 deadline).

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The above time frame will allow Pancheri, and other ground water users, sufficient time to save and plan now to have enough funds to purchase and install the measuring devices on or before April 1, 2022.

We appreciate your careful consideration of these comments as the Hearing Officer in the above-entitled matter.

Best regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

c: Gary Spackman, Director
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