

BROWN & JAMES**ATTORNEYS AT LAW**

130 Fourth Avenue West
GOODING, IDAHO 83330

Philip A. Brown
Joseph F. James

Telephone: (208) 934-8185
Facsimile: (208) 934-4101

February 23, 2015

FAX COVER LETTER

PAGES BEING SENT: 11
(INCLUDING COVER SHEET)

TO: Gary Spackman, Director
Idaho Department of Water Resources

FAX: (208) 287-6700

FROM: Joseph F. James

SUBJECT: Request for Administration of Water Rights under
the Prior Appropriation Doctrine

Please see the following two letters with exhibits. If you have any questions, feel free to contact our office. Thank you.

CONFIDENTIALITY NOTE

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February 23, 2015

Gary Spackman, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098*Sent Via Facsimile to: (208) 287-6700*
Original to Follow Via Regular Mail**RE: Members Big Wood & Little Wood Water Users Association, Diverting from the Little Wood River, Request for Administration of Water Rights under the Prior Appropriation Doctrine.**

Dear Director Spackman:

This Firm represents the members of the Big Wood & Little Wood Water Users Association. The members of the Association, set forth in Exhibit "A" attached hereto, hereinafter "Petitioners," are entitled to delivery of water from the Little Wood River below its confluence with Silver Creek. All the surface water rights listed in Exhibit "A" are all located in Water District 37, and are hydrologically connected to ground water rights in the Wood River Valley aquifer system.

Some background information may be helpful. In 1980, your predecessor issued a policy memorandum declaring surface water in the Big Wood River basin upstream from Magic Reservoir was fully appropriated. Following the issuance of the policy memorandum, no new water permits for consumptive purposes were issued for diversion of surface water from the Big Wood River, or its tributaries, above Magic Reservoir. However, the Department continued to issue water permits for the consumptive use of groundwater within the Wood River Valley aquifer system.

On June 28, 1991, your predecessor issued an order creating the Big Wood River Ground Water Management Area. The management area included ground water located within the Wood River Valley and the Camas Creek drainage above Magic Reservoir, and the Silver Creek/Bellevue triangle area. The June 1991 order included a finding that the surface and ground waters of the Big Wood River drainage are interconnected, and that diversion of ground water from wells can deplete the surface water flow in streams and rivers.

Gary Spackman
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On the September 17, 2013, after obtaining approval for interim administration, a preliminary order was issued which became final. The September 2013 order combined Water District No. 37 and Water District No. 37M under the designation of Water District No. 37. The order provided for the inclusion of both surface and groundwater in the Big Wood River and Little Wood River drainages, excepting Camas Creek and other named tributaries. The September 2013 order also created Water District No. 37-B to include the surface and ground water rights in the Camas Creek drainage.

The past and present failure of the Idaho Department of Water Resources to administer the subject surface and hydrologically connected ground water rights under the prior appropriation doctrine has resulted in material injury to Petitioners. The Little Wood River below its confluence with Silver Creek is hydrologically connected to the Wood River Valley aquifer system. Ground water use from the Wood River Valley aquifer has increased. The accompanying downward trend in ground-water levels has resulted in significantly lower flows in Silver Creek which is largely fed by ground water.

Ground water use in the Bellevue Triangle, for pumped irrigation, almost doubled during the period of 1975 to 1993.¹ A comparison of depth to groundwater measurements on selected wells, during the period of 1970 to 1993, showed a general declining trend in ground water levels.² In 2007, a significantly declining trend in ground water levels was confirmed by utilizing certain wells having more than 50 years of measurement data.³

“Because Silver Creek and its tributaries are fed primarily by ground water discharging through seeps and springs, and because irrigation diversions and returns to and from Silver Creek are minimal, seasonal fluctuations in streamflow are directly related to water levels in the Wood River Valley aquifer system.”⁴ After 1930, the average annual flow in Silver Creek below Picabo was reasonably constant at approximately 160 cfs.⁵ After 1987, average annual flow in Silver Creek decreased markedly with levels averaging below 120 cfs from 1988 through 1993.⁶ During the period of 1975 through 2005, annual discharge via Silver Creek near Picabo decreased, and the mean monthly discharge for July through February and April also decreased.⁷ It should be

¹ Brockway, C.E., and Kahlow, M.A., 1994, Hydrologic Evaluation of The Big Wood River and Silver Creek Watersheds, Phase I, 52 pgs. At pg. 44.

² Id.

³ Skinner, K.D., Bartolino, J.R., and Tranmer, A.W., 2007, Water Resource Trends and Comparisons Between Partial-Development and October 2006 Hydrologic Conditions, Wood River Valley, South Central Idaho, 30 pgs. At p. 17.

⁴ Skinner, 2007, at pg. 21. Citing Moreland, J.A., 1977, Ground Water-Surface Water relations in the Silver Creek Area, Blaine County, Idaho, 42 pgs.

⁵ Brockway, 1994, at pgs. 48-49.

⁶ Brockway, 1994, at pg. 49.

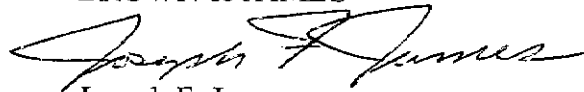
⁷ Skinner, 2007, pg. 21.

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noted that discharge from the Wood River Valley aquifer system via Silver Creek has continued to decline. On February 2, 2015, the Sportsman Access gauging Station on Silver Creek near Picabo (USGS 13150430) recorded a record low flow for the date of 64 cfs. The old record low flow for February 2nd was recorded in 2014 with a flow of 104 cfs.

Due to the failure of the Idaho Department of Water Resources to administer the subject water rights under the prior appropriation doctrine, the Petitioners have suffered from premature curtailment of delivery of their surface water rights, along with the accompanying material injury. Any future delay in the requested administration will result in further injury. Accordingly, Petitioners hereby demand that you direct the Watermaster for Water District No. 37 to administer Petitioners' surface water rights, and hydrologically connected to ground water rights within the district in accordance with the prior appropriation doctrine.

Sincerely,
BROWN & JAMES



Joseph F. James

JFJ/dw

Enclosure

cc: John Arkooshi, Don Taber, Nick Westendorf, Rod Hubsmit, Mark Sabala, Kevin Lakey

Petitioners Diverting from the Little Wood River				
OWNER	RIGHT NO.	DIVERSIN RATE (cfs)	PRIORITY DATE	WATER USE
BROWN, CATHY M; BROWN, JOCK S 7 MILE RANCH LLC	37-1126	0.8	04/08/1908	IRRIGATION
TABER, DONALD E	37-0321	3	04/30/1884	IRRIGATION
TABER, DONALD E	37-0424	2.2	04/01/1884	IRRIGATION
TABER, DONALD E	37-0425	2.2	04/01/1887	IRRIGATION
TABER, DONALD E	37-0423	0.3	04/01/1883	IRRIGATION
HUBSMITH, KAYSI SHARON; HUBSMITH, RODNEY FRED	37-0472	1.2	04/01/1884	IRRIGATION
MATHENEY, JOE; MATHENEY, MELISSA	37-0471	2	04/30/1884	IRRIGATION
MATHENEY, JOE; MATHENEY, MELISSA	37-1125	3.2	05/20/1908	IRRIGATION
RITTER, JAMES B; RITTER, LINDA	37-0049	4.2	04/01/1883	IRRIGATION
BARNETT, CAROLE; BARNETT, DELBERT	37-22178	.05	04/01/1884	IRRIGATION
ROSE, KENNETH O; ROSE, MARY D	37-0691 B	.24	04/01/1885	IRRIGATION
BARBARA FARMS LLC	37-0344 A	4	04/06/1883	IRRIGATION
BARBARA FARMS LLC	37-0973	2	04/01/1884	IRRIGATION
KOOSH INC	37-0485	1.1	04/01/1883	IRRIGATION
BURNETT, ELIZABETH J; DAY, MONTIE S	37-0460	4	06/03/1884	IRRIGATION
BURNETT, ELIZABETH J; DAY, MONTIE S	37-0461	1.4	07/17/1884	IRRIGATION
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-0327	2.2	05/15/1884	IRRIGATION
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-0329	2	05/15/1886	IRRIGATION
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-0176	2	04/01/1890	IRRIGATION
ARKOOSH, KAREN A; ARKOOSH, WILLIAM	37-1131	2.4	08/01/1906	IRRIGATION
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-0326	.4	11/01/1882	IRRIGATION
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-0328	.6	04/01/1885	IRRIGATION

ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-1127	1.6	04/01/1905	IRRIGATION
ASTLE, BRADLEY J; PIERCE, JOYCE A	37-21650	.04	04/01/1883	IRRIGATION
GARZA, MELISSA; GARZA, ROMAN	37-20847	.04	04/01/1883	IRRIGATION
KUNTZ, CALVIN D; KUNTZ, JOYCE DARLENE	37-0193 A	1	04/01/1883	IRRIGATION
BIG WOOD CANAL CO	3721401	5.3	05/15/1885	IRRIGATION
BIG WOOD CANAL CO	37-2142	3.55	04/06/1883	IRRIGATION
BIG WOOD CANAL CO	37-21403	5.2	04/01/1887	IRRIGATION
BIG WOOD CANAL CO	37-0344 B	.6	04/06/1883	IRRIGATION
BIG WOOD CANAL CO	37-21404	15.3	07/01/1896	IRRIGATION
BIG WOOD CANAL CO	37-21405	2.61	04/01/1884	IRRIGATION
BIG WOOD CANAL CO	37-13111	75	12/24/1906	STOCKWATER
CITY OF GOODING	37-0282	1	04/01/1877	GROUND WATER RECHARGE
CITY OF GOODING	37-0271 A	.32	06/30/1882	GROUND WATER RECHARGE
CITY OF GOODING	37-0662	1.42	06/15/1885	GROUND WATER RECHARGE
CITY OF GOODING	37-0709 A	.74	02/22/1883	GROUND WATER RECHARGE
CITY OF GOODING	37-0262 A	3.16	02/22/1883	GROUND WATER RECHARGE
CITY OF GOODING	37-0960 A	.57	04/01/1883	GROUND WATER RECHARGE
CHURCH OF THE NAZARENE	37-0194 B	.24	04/01/1884	IRRIGATION
T5 RANCH LLC	37-21838	1.56	06/15/1888	IRRIGATION, STOCKWATER
T5 RANCH LLC	37-8887	1.12	01/05/1999	IRRIGATION
NEWELL, CHARLES E	37-0432	2.6	04/15/1885	IRRIGATION

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February 23, 2015

Gary Spackman, Director
Idaho Department of Water Resources
P.O. Box 83720
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Original to Follow Via Regular Mail

RE: Members Big Wood & Little Wood Water Users Association, Diverting from the Big Wood River, Request for Administration of Water Rights under the Prior Appropriation Doctrine.

Dear Director Spackman:

This Firm represents the members of the Big Wood & Little Wood Water Users Association. The members of the Association, set forth in Exhibit "A" attached hereto, hereinafter "Petitioners," are entitled to delivery of water from the Big Wood River below Magic Dam. All the surface water rights listed in Exhibit "A" are all located in Water District 37, and are hydrologically connected to ground water rights in the Wood River Valley aquifer system.

Some background information may be helpful. In 1980, your predecessor issued a policy memorandum declaring surface water in the Big Wood River basin upstream from Magic Reservoir was fully appropriated. Following the issuance of the policy memorandum, no new water permits for consumptive purposes were issued for diversion of surface water from the Big Wood River, or its tributaries, above Magic Reservoir. However, the Department continued to issue water permits for the consumptive use of groundwater within the Wood River Valley aquifer system.

On June 28, 1991, your predecessor issued an order creating the Big Wood River Ground Water Management Area. The management area included ground water located within the Wood River Valley and the Camas Creek drainage above Magic Reservoir, and the Silver Creek/Bellevue triangle area. The June 1991 order included a finding that the surface and ground waters of the Big Wood River drainage are interconnected, and that diversion of ground water from wells can deplete the surface water flow in streams and rivers.

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The past and present failure of the Idaho Department of Water Resources to administer the subject surface and hydrologically connected ground water rights under the prior appropriation doctrine has resulted in material injury to Petitioners. The Big Wood River is hydrologically connected to the Wood River Valley aquifer system. Ground water use from the Wood River Valley aquifer has increased. The accompanying downward trend in ground-water levels has resulted in significantly lower flows in the Big Wood River near Bellevue which is largely fed by ground water.

Ground water use in the Bellevue Triangle, for pumped irrigation, almost doubled during the period of 1975 to 1993.¹ A comparison of depth to groundwater measurements on selected wells, during the period of 1970 to 1993, showed a general declining trend in ground water levels.² In 2007, a significantly declining trend in ground water levels was confirmed by utilizing certain wells having more than 50 years of measurement data.³

“Because Silver Creek and its tributaries are fed primarily by ground water discharging through seeps and springs, and because irrigation diversions and returns to and from Silver Creek are minimal, seasonal fluctuations in streamflow are directly related to water levels in the Wood River Valley aquifer system.”⁴ “Therefore, streamflow in Silver Creek can be used as a proxy for trends in ground-water discharge to the Big Wood River on the Bellevue fan.”⁵

After 1930, the average annual flow in Silver Creek below Picabo was reasonably constant at approximately 160 cfs.⁶ After 1987, average annual flow in Silver Creek decreased markedly with levels averaging below 120 cfs from 1988 through 1993.⁷ During the period of 1975 through

¹ Brockway, C.E., and KahLown, M.A., 1994, Hydrologic Evaluation of The Big Wood River and Silver Creek Watersheds, Phase I, 52 pgs. At pg. 44.

² Id.

³ Skinner, K.D., Bartolino, J.R., and Tranmer, A.W., 2007, Water Resource Trends and Comparisons Between Partial-Development and October 2006 Hydrologic Conditions, Wood River Valley, South Central Idaho, 30 pgs. At p. 17.

⁴ Skinner, 2007, at pg. 21. Citing Moreland, J.A., 1977, Ground Water-Surface Water relations in the Silver Creek Area, Blaine County, Idaho, 42 pgs.

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⁷ Brockway, 1994, at pg. 49.

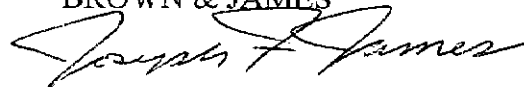
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2005, annual discharge via Silver Creek near Picabo decreased, and the mean monthly discharge for July through February and April also decreased.⁸ It should be noted that discharge from the Wood River Valley aquifer system via Silver Creek has continued to decline. On February 2, 2015, the Sportsman Access gauging Station on Silver Creek near Picabo (USGS 13150430) recorded a record low flow for the date of 64 cfs. The old record low flow for February 2nd was recorded in 2014 with a flow of 104 cfs.

Likewise, annual flow in the Big Wood River itself near Bellevue has shown decreasing trends since the 1940s.⁹ The decreased flow in the Big Wood River near Bellevue is most apparent during the winter months since the river is fed primarily by ground water during those months.¹⁰

Due to the failure of the Idaho Department of Water Resources to administer the subject water rights under the prior appropriation doctrine, the Petitioners have suffered from premature curtailment of delivery of their surface water rights, along with the accompanying material injury. Any future delay in the requested administration will result in further injury. Accordingly, Petitioners hereby demand that you direct the Watermaster for Water District No. 37 to administer Petitioners' surface water rights, and hydrologically connected to ground water rights within the district in accordance with the prior appropriation doctrine.

Sincerely,
BROWN & JAMES



Joseph F. James

JFJ/dw
Enclosure

cc: John Arkoosh, Don Taber, Nick Westendorf, Rod Hubsmith, Mark Sabala, Kevin Lakey

⁸ Skinner, 2007, pg. 21.

⁹ Id

¹⁰ Id

Petitioners Diverting from the Big Wood				
OWNER	RIGHT NO.	DIVERSIN RATE (cfs)	PRIORITY DATE	WATER USE
OPPIO LAND & LIVESTOCK LLC	37-0238 A	2	04/15/1883	IRRIGATION
OPPIO LAND & LIVESTOCK LLC	37-0239 A	1.72	08/29/1884	IRRIGATION
OPPIO LAND & LIVESTOCK LLC	37-0240 A	2.28	06/01/1895	IRRIGATION
LEGUINECHE, JOE; LEGUINECHE, LINDA	37-0178	2.5	05/01/1896	IRRIGATION
DAVID & NICOLE HULTS	37-22795	1.2	05/01/1905	IRRIGATION
DESERT ROSE RANCH INC	37-287 A	.33	06/01/1884	IRRIGATION
ROTH INVESTMENTS LLC	37-0586	2.64	04/03/1889	IRRIGATION
ROTH INVESTMENTS LLC	37-0589	3	05/01/1904	IRRIGATION
ROTH INVESTMENTS LLC	37-0587	.8	04/02/1905	IRRIGATION
SEVERE, BERTHA	37-0607 B	.14	08/15/1886	IRRIGATION
SEVERE, BERTHA	37-0608 B	.098	04/15/1887	IRRIGATION
PAUL & RUBY BANCROFT	37-0245	1.6	06/01/1898	IRRIGATION
PAUL & RUBY BANCROFT	37-0246	.8	06/01/1901	IRRIGATION
PAUL & RUBY BANCROFT	37-0247	.8	06/01/1902	
IEST, TINA	37-0619 A	2.4	05/01/1884	IRRIGATION
IEST, TINA	37-0620	1.3	05/01/1891	IRRIGATION
MEYERS, KATHI L; MEYERS, ROBERT J	37-20546	.95	05/15/1899	IRRIGATION
MEYERS, KATHI L; MEYERS, ROBERT J	37-20548	.64	02/10/1906	IRRIGATION
M & M FARMS	37-0072 B	2.2	04/01/1885	IRRIGATION
M & M FARMS	37-21279	6.4	11/01/1913	IRRIGATION
SABALA FARMS INC	37-0581	3.2	04/02/1906	IRRIGATION
WESTENDORF, JERRY; WESTENDORF, SUSAN	37-0619 B	.8	05/01/1884	IRRIGATION
WESTENDORF, JERRY; WESTENDORF, SUSAN	37-1191	2.4	09/02/1902	IRRIGATION
ARKOOSH, CARRIE R; ARKOOSH, JOHN W	37-21485	.128	05/27/1899	IRRIGATION

ARCOOSH, KAREN A; ARCOOSH, WILLIAM	37-0059 M	2.304	05/27/1899	IRRIGATION
BURNETT, ELIZABETH J; DAY, MONTIE S	37-10343	10.67	05/27/1899	IRRIGATION
4 BROS DAIRY INC	37-0611	2.8	04/30/1891	IRRIGATION
4 BROS DAIRY INC	37-0612	1.6	06/02/1903	IRRIGATION
4 BROS DAIRY	37-21393	.908	05/01/1896	IRRIGATION
4 BROS DAIRY INC	37-11114 B	5.3	04/27/1896	IRRIGATION
BLISS POINT CATTLE INC	37-22658	.77	06/01/1884	IRRIGATION
FAULKNER, KIM; FAULKNER, TOM	37-22534	1.41	06/01/1884	IRRIGATION
	37-0673			
LABBEE, BRANDON	37-21658	.07	08/06/1902	IRRIGATION
MOHR, ELIZABETH A; MOHR, STEVEN A	37-20347	.38	05/01/1896	IRRIGATION
MOHR, ELIZABETH A; MOHR, STEVEN	37-10210 B	.4	05/01/1896	IRRIGATION
MOHR, WENDY A	37-10210 A	.4	05/01/1896	IRRIGATION
DOUBLE V LLC	37-616	2.7	05/10/1897	IRRIGATION
T5 RANCH LLC	37-21836	2.24	05/27/1899	IRRIGATION
NEWELL, CHARLES E	37-0059 G	1.37	05/27/1899	IRRIGATION