State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 16, 2004

ROGER LING
BRIAN J COFFEY
ATTORNEYS AT LAW
PO BOX 396
RUPERT ID 83350-0396

Re: Rangen Order; Request for Exclusion/Mitigation by A & B Irrigation District

Gentlemen:

You sent a petition to the Idaho Department of Water Resources (IDWR) on behalf of the A & B Irrigation District (hereinafter referred to as "the irrigation district"), requesting exclusion from curtailment of diversion of water under the curtailment order issued February 25, 2004, and amended on March 10, 2004. This letter responds to the request for exclusion.

Your request for exclusion of the irrigation district asserted that diversion of water authorized by some of the irrigation district's water rights bearing priority dates later than July 13, 1962 will not diminish flows of springs discharging to the Snake River in the Thousand Springs Reach from Milner to King Hill. The argument was based on the defined source of the water rather than a technical argument that ground water diverted under the rights was not hydraulically connected. Nonetheless, IDWR assumed all the water is diverted from ground water, and evaluated the irrigation district's diversion and its effect on spring flow from the commencement of diversion under the irrigation district's post July 13, 1962 priority water rights to the present. Enclosed are the results of IDWR's evaluation. The evaluation concludes that the irrigation district's diversion of ground water, assuming it is diverted from ground water, diminishes the discharge of springs to the Thousand Springs Reach, and is causing material injury to senior priority water rights.

Count I of the Petition

The petition identifies five water rights, numbered 36-15127B, 36-15193B, 36-15194B, 36-15195B, and 36-15196B, all bearing priority dates later than July 13, 1962, the priority date of the Rangen, Inc. water right that was the subject of the curtailment order, and summarizes components of the water rights. The summary of the water rights lists the source of water as "ground, drain, and waste" water. The summary also states that the water diverted under the rights irrigates 2,063.1 acres.

The text of the petition states that the irrigation district recaptures irrigation wastewater and additional surface runoff, characterized as drain water, to irrigate the 2,063.1 acres. The petition also states that the drain water provides additional incidental recharge, and that curtailment of use of the drain water "would not reach or contribute to spring flows sought to be protected by the Director's Order."

The water rights identified by the petition are water rights decreed in the Snake River Basin Adjudication (SRBA) as enlargement claims authorized by, Idaho Code § 42-1426. I understand the presiding district court judge for the SRBA determined that water supplied by these water rights is derived from ground water, and that wastewater and drain water will not be a source of water listed on the water rights. I also understand the matter has been appealed to the Idaho Supreme Court.

The district court determined that the water source is ground water. IDWR will follow the determination of the district court unless there is a reversal of the decision on appeal. The water rights are subject to the curtailment orders.

Count II of the Petition

The petition seeks exclusion on the basis that the Director of IDWR "has failed to curtail water rights to the groundwater of the ESPA that are junior to petitioner's rights," and that the March 10, 2004 order "should be amended to curtail all junior ground water diversions in the ESPA or be withdrawn."

The March 10 order determined that diversions under consumptive ground water rights within Water District 130, encompassing a portion of the ESPA, were causing a material injury to the Thousand Springs Reach. The order also determined that diversions of water within Water District 120, also encompassing a portion of the ESPA, were not causing material injury to the Thousand Springs Reach. The basis for this determination is set forth in the order, and will not be disturbed.

The March 10 order also determined a volume of water that would flow to the springs if all consumptive ground water rights within Water District 130, bearing priorities earlier than July 13, 1962, were curtailed. It also offered avoidance of curtailment if the volume of depletion to the springs were replaced through mitigation.

On March 20, 2004, the State of Idaho, Magic Valley Ground Water District, North Snake Ground Water District, and several surface water users executed an agreement for interim mitigation during a period of one year. On the same date, the Idaho Legislature enacted legislation recognizing the agreement and authorizing various components of the plan. On

March 24, 2004, the Director of IDWR issued an order adopting the agreement as mitigation for the depletions caused by ground water diversions.

The Rangen order will not be amended or withdrawn as requested by your petition.

Count III of the Petition

The water right summary identifies a place of use of 2,063.1 acres irrigated with 8,252.4 acre-feet of water. The petition asserts that the irrigation district once irrigated 1,418 acres of land located elsewhere with ground water diverted under a 1948 priority ground water right, and that these acres are now irrigated with Snake River storage water. The petition seeks credit for the voluntary curtailment in diversion of 4,254 acre-feet of ground water to the 1,418 acres. Division of total volume by total acreage computes a volume of 3.0 acre-feet per acre. In addition, the petition seeks a credit of 2.35 acre feet per acre, or 3,332.3 acre feet, presumably for surface water delivered to the same 1,418 acres that is not consumed, but percolates into the aquifer.

The proposed credit for ceasing to divert ground water is based on 3.0 acre-feet per acre. The derivation of the number is not explained, but I assume it represents pumping data or headgate deliveries recorded by the irrigation district, and probably is the total volume of water pumped, not the volume consumed.

In contrast, the explanation of proposed credit for delivery of surface water to the 1,418 acres states that the 2.35 acre-feet per acre is the balance not consumed and draining into the ESPA. In addition, the petition states that 4,254-acre feet of water are diverted from the Snake River for the 1,418 acres. This computes to a diversion of 3.0 acre-feet per acre. If 2.34 acre-feet per acre recharges the aquifer, only 0.65 acre-feet per acre is consumed. This value is well below reasonable estimates of consumptive use.

IDWR cannot recognize additive credits for the total volume that was once diverted from ground water plus an assumed nonconsumptive portion of the replacement surface water that is not supported by any other information in the petition.

It is possible that delivery of surface water to the 1,418 acres adds water to the aquifer in excess of the water that would have been recharged when the lands were irrigated with ground water. Before the irrigation district can receive any credit for this water, however, the irrigation district must show how much additional water percolates to the aquifer as a result of the surface water deliveries to the 1,418 acres over and above what percolates to the ground water because of its normal surface water operations. If there were additional ditches and delivery works constructed for delivery of water to the 1,418 acres, the losses to ground water from these delivery works could possibly be recognized as credits.

The ESPA ground water model assumes an average depletion to the aquifer of 1.6 acre feet per acre on land irrigated with ground water. IDWR conceptually recognizes, as mitigation, the addition of 1.6 acre feet per acre to the aquifer for the 1,418 acres no longer irrigated with ground water. The irrigation district must submit detailed information about this conversion and identify the acres now irrigated with surface water before the mitigation plan is approved.

Approximately 2,063 acres are irrigated with ground water diverted under junior priority ground water rights. When the irrigation district identifies the 1,418 acres now irrigated elsewhere with surface water, the irrigation district may take a credit of 1.6 acre feet per acre for 1,418 acres irrigated with water diverted under water rights with priority dates later than July 13, 1962. The irrigation district must also identify 1,418 acres of the 2,063 acres it wants to receive the mitigation credits. The remaining 645 acres are not presently covered by mitigation provided by the irrigation district.

Effect of Legislation on the Irrigation District

The legislature enacted House Bill No. 848 as part of the legislation related to curtailment order. The bill provides that a water user not a member of a ground water district is deemed a nonmember participant solely for mitigation provided by the ground water district nearest the water user's point of diversion if: (1) Diversion of water under the junior priority ground water right is causing material injury to senior priority water rights; (2) The water rights are administered by a watermaster in a water district, and (3) The director has approved mitigation for the ground water district.

IDWR's analysis concluded that your diversion of ground water under a junior priority ground water right is causing material injury to senior water rights. A watermaster in a water district administers your water right. As discussed above, by order dated March 24, 2004, the director adopted the agreement as approved mitigation for the North Snake Ground Water District and the Magic Valley Ground Water District.

Pursuant to the agreement and House Bill 848, on April 1, 2004, A & B Irrigation District may be deemed a nonmember participant for mitigation in the Magic Valley Ground Water District. Unless the A & B Irrigation District can show additional mitigation, irrigation of the 645 acres not currently considered to be separately covered by mitigation will be deemed to be covered as a nonmember participant in the approved mitigation for the Magic Valley Ground Water District.

As a nonmember participant in the mitigation of the Magic Valley Ground Water District, A & B Irrigation District must pay assessments to the Magic Valley Ground Water District for its proportionate share of the cost (based on the 645 acres not covered by approved individual

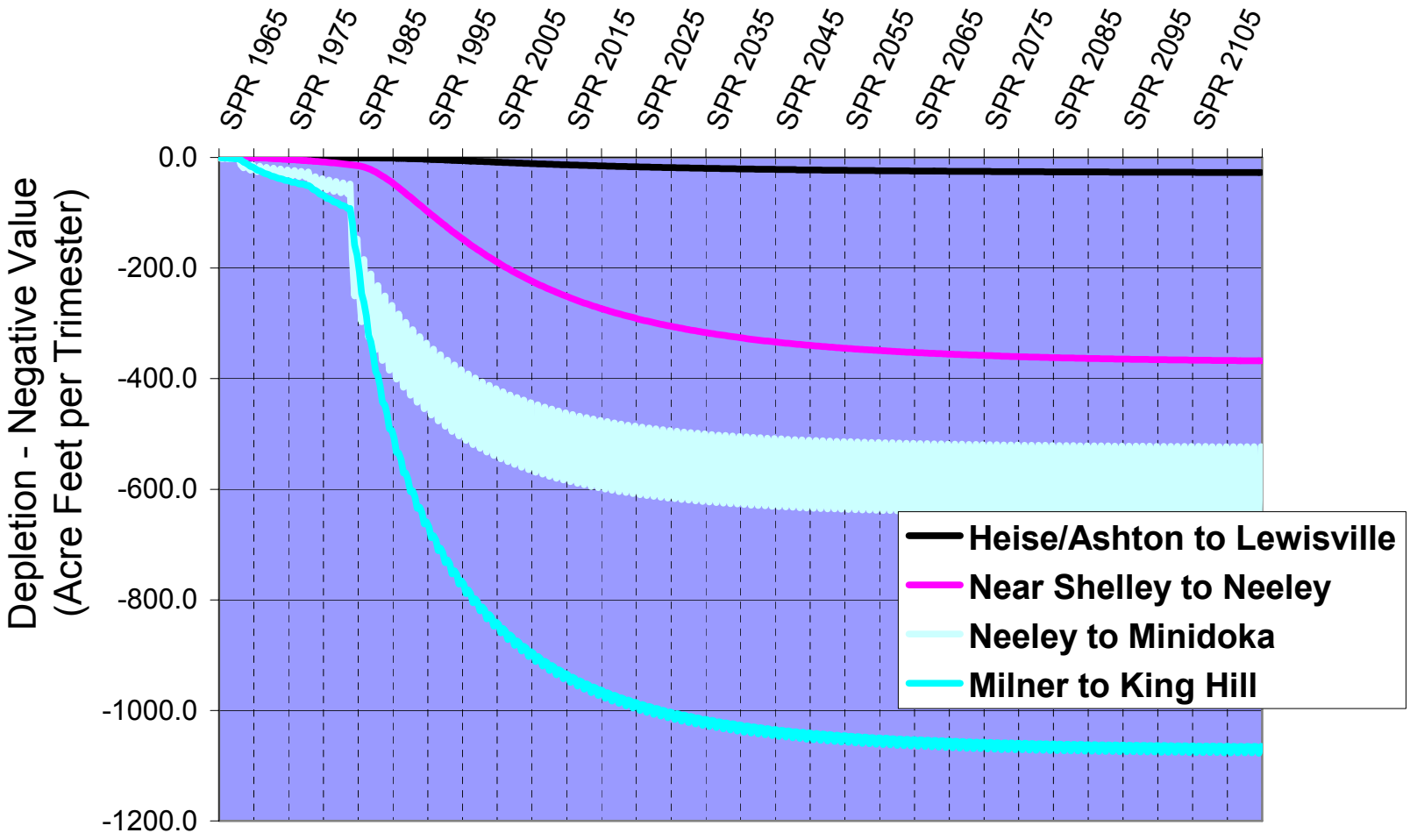
mitigation) of mitigating for depletions to senior water rights. A copy of this letter is being sent to the Magic Valley Ground Water District. Please contact Pam Miller of the district at 809 E 1000 N, Rupert, ID 83350, telephone no. (208) 531-5316 to discuss the details of your assessment. I would be happy to participate in these discussions to insure the assessment is correct. There also may be some other alternatives for mitigation that have not been explored. I would be happy to discuss these alternatives as well.

Sincerely,

Gary Spackman

Encl.
c. Magic Valley Ground Water District
Cindy Yenter, Water Measurement District 130

Net Effect
A & B Irrigation Dist.



A & B Irrigation Dist.

Right No.	**Priority**	Rate (cfs)	Acres	Authorized Volume (afa)	FHR (afa/acre)	CIR (afa/acre)	**Volume Used (afa)**		POD	Model Cell	**Cell Used**
36-15193B	**4/1/65**	0.31	18.9	75.6	4.0	3.0	**56.7**	multiple			**R8 C21 + R10 C29**
36-15194B	**4/1/68**	2.51	152.4	609.6	4.0	3.0	**457.2**	multiple			**R8 C21 + R10 C29**
36-15195B	**4/1/78**	2.24	135.6	542.4	4.0	3.0	**406.8**	multiple			**R8 C21 + R10 C29**
36-15196B	**4/1/81**	0.08	4.7	18.8	4.0	3.0	**14.1**	multiple			**R8 C21 + R10 C29**
36-15127B	**4/1/84**	28.89	1751.5	7006.0	4.0	3.0	**5254.5**	multiple			**R8 C21 + R10 C29**

selected 2 wells representative of the area