State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 9, 2004

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

Re: Rangen Order; Request for Exclusion by Minidoka School District for water right nos. 36-7134 & 36-7135

Gentlemen:

You sent a petition to the Idaho Department of Water Resources (IDWR) on behalf of the Minidoka County School District # 311 (hereinafter referred to as "the school 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 school district was not based on the relationship between diversion of ground water and flows of springs discharging to the Snake River in the Thousand Springs Reach from Milner to King Hill. Nonetheless, IDWR evaluated the school district's diversion of ground water and its effect on spring flow from the commencement of diversion under your water rights to the present. Enclosed are the results of IDWR's evaluation. The evaluation concludes that the school district's diversion of 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 asserts that the school district "recaptures irrigation surface water from lands within the Minidoka Irrigation District Project pursuant to Idaho Code § 42-228."

Idaho Code § 42-228 states:

> . . . there shall be excepted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation districts, and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the

parties constructing the wells are appurtenant; provided that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code.

Idaho Code § 42-228 grants the authority to drill wells for recovery of water to "canal companies, irrigation districts, and other owners of irrigation works . . . for further use on . . . lands to which the established water rights of the parties constructing the wells are appurtenant." IDWR has no information that would establish that the school district is an "owner of such irrigation works" and that it owns surface water rights appurtenant to its place of use. IDWR does not believe the school district qualifies to invoke the authorities of Idaho Code § 42-228.

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 may be junior to petitioner's rights," and that the March 10, 2004 order "should be amended to curtail all ground water diversions junior in the ESPA junior to petitioner 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. 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. Limited curtailment of ground water rights bearing priority dates early than June 24, 1970, the priority dates of the school district's ground water rights, would result in less additional flow to the Thousand Springs Reach of the Snake River than full curtailment.

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.

Effect of Legislation on the School District

The legislature enacted House Bill No. 848 as part of the legislation related to the 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 the school district's 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 the district's 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, the school district is deemed a nonmember participant for mitigation in the Magic Valley Ground Water District. The school district's participation in the ground water district will allow it to begin irrigating on April 10, 2004, continuing through October 31, 2004.** If the school district has already petitioned the ground water district for either a full or mitigation only membership, the petition will continue to be processed by the ground water district.

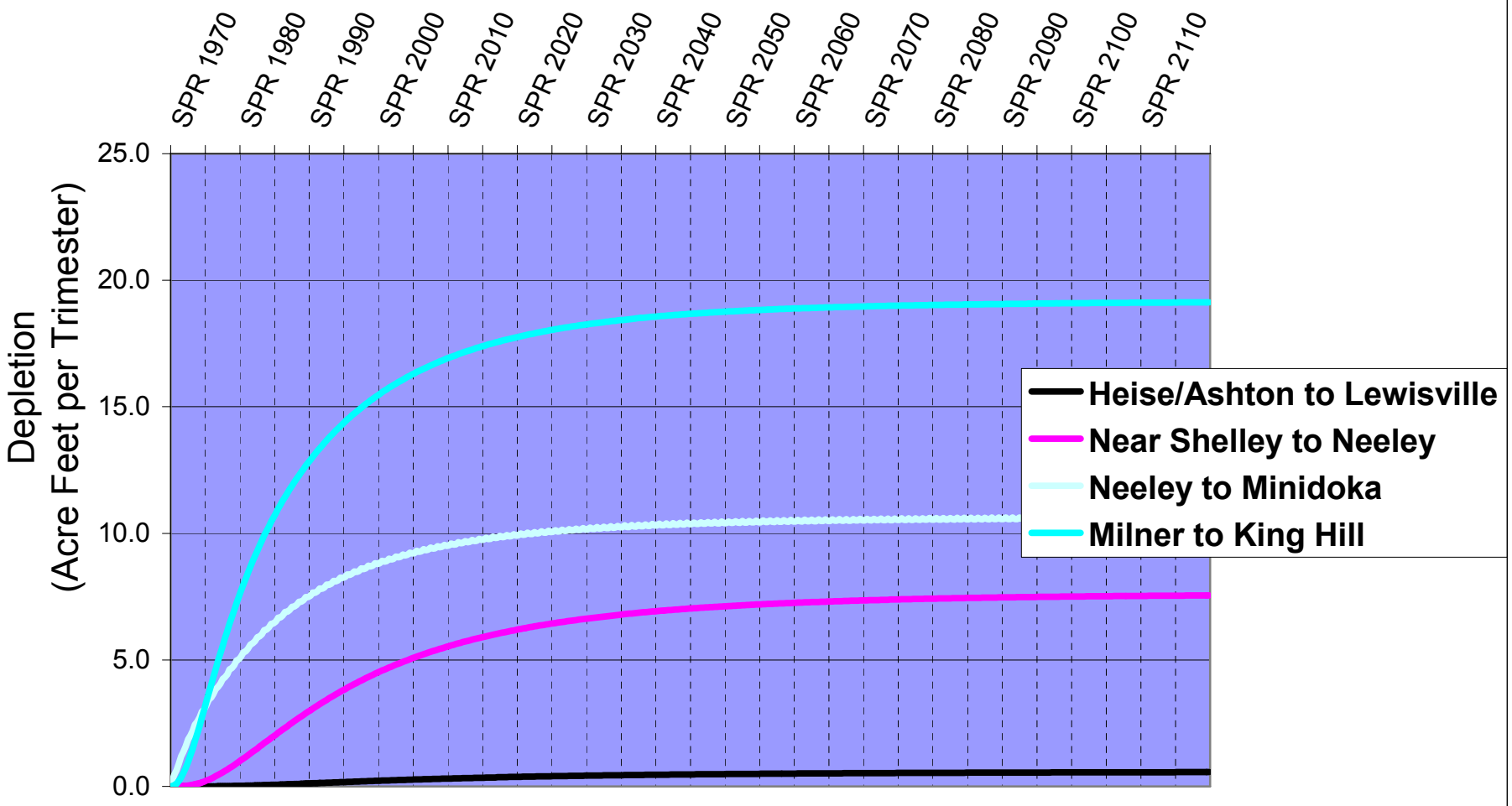
When the school district becomes a nonmember participant in the mitigation efforts of the Magic Valley Ground Water District, it must pay assessments to the district for its proportionate share of the cost of mitigating for depletions to senior water rights. A copy of this letter is being sent to the Magic Valley Ground Water District. You must 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.

Sincerely,

Gary Spackman

Enclosures
Cc: Magic Valley Ground Water District
Cindy Yenter, Watermaster, Water District 130

Net Transfer Effect
MINIDOKA COUNTY SCHOOL DISTRICT #311



MINIDOKA COUNTY SCHOOL DISTRICT #311

Right No.	**Priority**	Rate (cfs)	Acres	Authorized Volume (afa)	FHR (afa/acre)	CIR (afa/acre)	**Volume Used (afa)**	POD	Model Cell	**Cell Used**	Supplemental?
36-7134	**6/24/70**	0.38	19.0	76.0	4.0	3.0	**57.0**	T9S R23E 32 NESE	R6 C24	**R6 C24**	N
36-7135	**6/24/70**	0.38	19.0	76.0	4.0	3.0	**57.0**	T9S R24E 20 SENENW	R7 C26	**R7 C26**	N

Comments:
Volume Used or CIR (afa) based on department standard.