

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
FREDERICK J. HAHN, III
DAVID E. ALEXANDER
PATRICK N. GEORGE
SCOTT J. SMITH
JOSHUA D. JOHNSON
STEPHEN J. MUHONEN
BRENT L. WHITING
JONATHAN S. BYINGTON
DAVE BAGLEY
CAROL TIPPI VOLYN
THOMAS J. BUDGE
CANDICE M. MCHUGH
JONATHAN M. VOLYN
MARK A. SHAFFER
JASON E. FLAIG

201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

www.racinelaw.net

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE
101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE
477 SHOUP AVENUE
SUITE 203
POST OFFICE BOX 50698
IDAHO FALLS, ID 83405
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

COEUR D'ALENE OFFICE
250 NORTHWEST
BOULEVARD, SUITE 106A
COEUR D'ALENE, ID 83814
TELEPHONE: (208) 765-6888

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2008)
WILLIAM D. OLSON, OF COUNSEL

June 25, 2009

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
d.tuthill@idwr.idaho.gov

Re: *Implementation of Non-Stayed Portion of Ground Water Districts'
Snake River Farm Replacement Plan for 2009 and 2010*

Dear Director Tuthill:

This letter provides an initial response to your June 19, 2009, letter regarding the above-referenced matter on behalf of North Snake Ground Water District and Magic Valley Ground Water District (collectively "Ground Water Districts"). Because of the short response deadline of "no later than June 25, 2009," it is not possible to provide a complete response at this time. We will supplement this response as soon as reasonably possible after our consultant has had an opportunity to review Ms. Yenter's Report dated June 12, 2009.

The 2009 Replacement Water Plan and Third Mitigation Plan (Over-the-Rim) of North Snake Ground Water District and Magic Valley Ground Water District ("2009 Plan") stated on page 7 that "the total acres proposed to be converted is approximately 1060 acres." However, it is important to remember that the objective of the 2009 Plan was to select wells that had enough historical average pumping to directly supply the full replacement water requirement to Snake River Farms on a continuous year-round basis without substantially changing the historical pumping regime. The objective was not to simply convert lands from ground water to surface water irrigation. The conversions were necessary and incidental to provide irrigation water to the lands that would no longer have ground water for irrigation because the ground water was going to be redirected to Snake River Farms.

June 25, 2009

Page 2

When the 2009 Plan was filed, the exact number of acres to be converted was unknown. It was contemplated that the properties belonging to Heida, Box Canyon and Brown would be converted as depicted on Exhibit 3 based upon verbal commitments. Subsequently, Brown refused to sign a Lease and Conversion Agreement. Therefore, the Van Dyk property and their Water Right Nos. 36-7319 and 36-7454 were substituted to meet the supply requirement for direct delivery to Snake River Farm, not to meet a specific acreage of conversions. The Van Dyk conversions were reflected in the Ground Water Districts' Weekly Progress Reports to the Director for Weeks 8, 9 and 10.

While the VanDyk authorized irrigated acreage is somewhat less, pumping records obtained from Ms. Yenter indicated that their historical average pumping was slightly greater than Brown's (255 af/yr vs. 238 af/yr). For this reason it was felt that the substitution would not compromise the primary objectives of the 2009 plan (the redirection of pumped groundwater to Snake River Farm). Also, their water right quantities were approximately the same as under the Brown right, resulting in a similar reduction of ground water depletion when converted to surface water.

Similarly, with respect to POU parcel B and wells 2 and 4, the wells were selected for their historical pumping amounts so as to support direct delivery of ground water to Snake River Farm. The records provided by Ms. Yenter indicated an average of 724 af/yr of pumping from those wells for the period 2003-2007, despite the fact that it appears the owners of the land in Section 1 of T9S were not using the wells during this period.

The Ground Water Districts would also like to address the 9,300 acres within the North Snake Ground Water District previously converted from ground water to surface water irrigation. Information which the Ground Water Districts are presently gathering indicates that some amount less than 9,300 acres will be converted this year. The Ground Water Districts are actively seeking additional conversion acres to replace those that have discontinued. This appears to be due in part to economic conditions and record rainfall. The dairy industry is in an extremely depressed state and the cost of the surface water delivery to the landowner has increased .

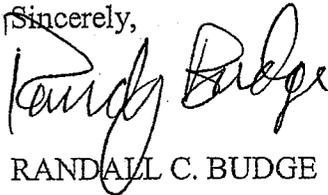
As you know, this is a unique water year with all-time record rainfall recorded throughout the region in June and virtually no pumping occurring since mid-May. As a result the Ground Water Districts indicate that there has been virtually no demand on the North Side Canal Company delivery system, nor any demand on the ground water resource. Accordingly nearly all water in the canal systems has gone to recharge, waste water or returned back to the river.

Participation in the CREP Program is continuing and it is anticipated there may be some increase in participation this year.

June 25, 2009
Page 3

If the foregoing, coupled with additional information to be submitted is not acceptable and the Director determines to remove the two-year partial stay, the Ground Water Districts are prepared to proceed with the construction of the over-the-rim delivery portion of the 2009 Plan.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosure

cc: Candice McHugh
Daniel Steenson
J. Justin May
John Simpson
Mike Creamer
Jeff Fereday
Robert Williams
Travis Thompson
Michael Gilmore
Lynn Carlquist, Chairman/North Snake GWD
Dean Stevenson/Magic Valley GWD