State of Idaho
DEPARTMENT OF WATER RESOURCES
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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 26, 2013

Mr. Paul L. Arrington
Barker Rosholt & Simpson
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301

Re: Conjunctive Management Rules – area of common ground water supply

Dear Mr. Arrington:

Your letter of August 15, 2013 requested, on behalf of the Surface Water Coalition, that the Idaho Department of Water Resources ("Department") restart the negotiated rulemaking process with respect to the area of common ground water supply for the Eastern Snake Plain Aquifer. Your letter correctly states that my letter to water users of August 9, 2011 concluded: "Once ESPAM version 2.0 is finalized, I will instruct Department staff to restart the negotiated rulemaking process … ." At the time I wrote the letter, I fully intended to restart the negotiated rulemaking process upon finalization of ESPAM version 2.0. However, the Rangen delivery call, filed in December of 2011, has raised significant issues regarding the use of ESPAM Version 2.1.[1] The application of ESPAM 2.1 in the Rangen deliver call proceeding will have implications for the area of common ground water and the negotiated rulemaking process. It would be an inefficient use of public resources for the Department to initiate negotiated rulemaking while closely related issues, which will broadly affect the public and the negotiated rulemaking process, are being actively addressed in a separate forum.

Regardless of how soon the Department recommences negotiated rulemaking, any changes to the area of common ground water supply can be implemented only after decisions about how ESPAM 2.1 will be applied to specific facts. The information being generated and analyzed in the Rangen call is a necessary prerequisite to addressing the broader issues of the boundary for the area of common ground water supply.

The initial round of negotiations over the proposed rule generated significant controversy. The Department must be in a position to articulate how potentially affected water users might be affected by a change in the area of common ground water.

[1] Version 2.0 was short-lived version of the model. Shortly after role out of 2.0, Department staff discovered some of the data was invalid. The invalid data was corrected and the revision was designated Version 2.1.

I recognize there is an argument that the redefinition of an area should be a simple process and that the Department should change the boundary and let the chips fall where they may. I am sensitive to this argument and intend to proceed as quickly as possible. However, I do not believe it is appropriate to initiate negotiated rulemaking until some of the outstanding questions in the Rangen proceeding are answered.

As soon as application of version 2.1 is addressed in the Rangen call, the negotiated rulemaking will recommence. I hope negotiations will actually occur. However, based on positions taken to date, the rulemaking process may again disclose that parties are either in full support of changes to the area of common ground water supply or unalterably opposed thereto. If that proves to be the case, it will largely fall to Department staff to address the technical issues involved. This makes it all the more important to await developments in the Rangen call before proceeding with negotiated rulemaking.

Sincerely,

Gary Spackman
Director

cc: John Simpson
Bryce Farris
Randall Budge
Sarah Klahn & Mitra Pemberton
Kent Fletcher
Jerry Rigby
Michael Creamer
Garrick Baxter
Richard Rigby