



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

April 26, 2021

Travis L. Thompson  
Attorney at Law  
163 Second Ave. West  
P.O. Box 63  
Twin Falls, Idaho 83301

Re: Request for Administration of Surface Water Rights in Portneuf River Basin

Dear Mr. Thompson:

I received your letter dated April 23, 2021. Your letter requests that I administer water rights authorizing diversion of surface water flowing in the Portneuf River Basin in priority with water rights authorizing diversion of surface water flowing in the Snake River. The Portneuf River flows year-round through Pocatello, Idaho from the southeast and discharges to the Snake River between Pocatello and American Falls, Idaho. You, members of your law firm, and Kent Fletcher represent members of the Surface Water Coalition (“SWC”), a group of seven irrigation entities<sup>1</sup> that hold water rights authorizing diversion of natural flow and storage water from the Snake River. Some of the water rights held by water delivery entities comprising the SWC bear priority dates that are senior to priority dates of water rights held by water users in the Portneuf River Basin.

**Duties, Responsibility, and Commitment**

Idaho law requires the Director to “divide the state into water districts in such manner that each public stream and tributaries, or independent source of water supply, shall constitute a water district . . . .” Idaho Code § 42-604. “The director . . . shall distribute water in water districts in accordance with the prior appropriation doctrine.” Idaho Code § 42-602.

“Distribution of water within water districts . . . shall be accomplished by watermasters . . . .” Idaho Code § 42-602. Idaho Code § 42-607 states:

It shall be the duty of said watermaster to distribute the waters of the public stream, streams, or water supply comprising a water district among the water users taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates or controlling works for the diversion of water from such stream, streams, or water supply, during times of

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<sup>1</sup> The Surface Water Coalition is comprised of A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

water scarcity, in order to supply the prior rights of others from such stream or water supply . . . .

Water rights held by the SWC are included in Water District 01, Snake River. Water rights held by water users diverting water rights from the Portneuf River and tributaries are included in Water District 29, Portneuf River (upstream of McCammon, ID); Water District 29D, Portneuf River (downstream of McCammon, ID); Water District 29H, Marsh Creek; and several water districts for smaller tributaries to the Portneuf River or Marsh Creek. Although there are several water districts in the Portneuf River Basin, neither the Portneuf River nor any tributary was decreed a “separate stream” in the Snake River Basin Adjudication (“SRBA”). The Portneuf River and its tributaries should all be administered together with the priorities of water rights authorizing diversion from the Snake River.

**Distribution of water to holders of water rights bearing senior priority dates and curtailment of diversion of water by holders of water rights bearing junior priority dates to accomplish the distribution of waters of the state of Idaho is a solemn duty of the Director of IDWR. As a result, I, through the watermasters of the water districts in the Portneuf River Basin, will expeditiously begin administering the water rights in the Portneuf River Basin to ensure that water rights bearing senior priority dates, both in the Portneuf River Basin and in the Snake River, receive the water to which they are entitled.**

#### **IDWR Actions for Water Administration**

Your letter implies I have been negligent by not implementing surface water administration this upcoming irrigation season. I am aware of the need for administration of the Portneuf River Basin water rights and have been actively working towards this goal. Over approximately the last decade, IDWR initiated the following in the Portneuf River Basin:

- Created a water district in the lower Portneuf River Basin
- Activated an inactive water district in Marsh Creek, requiring annual meetings, budget settings, and election of watermasters
- Ordered installation of diversion headgates and controlling works
- Ordered installation of measuring devices
- Began verification of headgate, controlling works, and measuring device installation
- Ordered measurement and reporting of diversions through the watermasters
- Informed water users that administration of water rights by priorities in both the Snake River and Portneuf River is imminent.

These activities raised the ire of water users in the Portneuf River Basin whose water rights have not heretofore been regulated. Despite this opposition, I was prepared to administer Portneuf River surface water irrigation water rights in 2021, but was undermined in this effort by statements by representatives of the SWC. When water users from the Portneuf River Basin asked representatives of the SWC why these water administration activities were being foisted upon the Portneuf River Basin water users, these SWC representatives responded that they did not ask the director of IDWR to administer water rights in the Portneuf River in priority with

Snake River water rights, implying that support for the Director's actions listed above was, at best, tepid, or perhaps nonexistent.

As a result, the Director's actions in the Portneuf River Basin were deemed by the Portneuf River water users as independent and unwanted water regulation unsupported by the Snake River waterusers whose water rights were supposed to be protected. It was the disinterest in delivery expressed by the SWC water users that led me to delay administration between the Portneuf River Basin and the Snake River and, instead, to promise full conjunctive management when administration is implemented.

Your demand letter now clearly states a change of position.

I disagree with your statement that I requested "the Committee of Nine to make provision in the Water District 01 rental pool procedures to [specifically] accommodate rentals for mitigation for those [Portneuf River Basin] junior priority diversions." I asked that the procedures for rental of Snake River storage in tributary basins be equitable and consistent across all tributary basins, and that the procedures should not single out one basin to exclude from rentals. Singling the Portneuf River out for exclusion was a primary case study in illustrating the inequities discussed. Water District 01 amended its rental pool procedures by creating the Assignment Pool through which storage water can be rented to waterusers in all tributary basins equitably.

Your letter implies some injustice or sleight of hand in my promoting equity. I disagree.

### **Water District Reorganization**

The abrupt demand for water administration in the Portneuf River Basin at the beginning of the 2021 irrigation season will require significant reallocation of IDWR resources and effort. Instructions to Portneuf River Basin watermasters for water right administration in these smaller districts may very well result in watermaster resignations or, at a minimum, resistance to regulation.

Difficulties in administration will not deter me from discharging my statutory duties.

Nonetheless, I have mentioned in at least one recent Committee of Nine Meeting that effective regulation of tributary basin water rights might require a change in the boundaries of Water District 01 with tributary basins being absorbed into Water District 01. Perhaps the urgency of your request increases the urgency of consideration of the merger.

Respectfully,



Gary Spackman  
Director

Mr. Travis Thompson

April 26, 2021

Page 4

cc: Garrick Baxter, Deputy Attorney General  
Tony Olenichak, Watermaster (Water District 01)  
Darrell Kerr, Chairman (Committee of Nine)  
Brent Bowen, Chairman (Rental Pool Subcommittee)  
Brian Olmstead, TFCC  
Alan Hansten, NSCC  
Dan Temple, A&B  
Jeff Warr, Milner  
Dan Davidson, MID  
David Stephenson, AFRD#2  
John Lind, BID  
Kent Fletcher  
John Simpson