



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

July 21, 2003

The Honorable Lenore Barrett
143 W Pleasant
PO Box 347
Challis, ID 83226

RE: INQUIRY ON BEHALF OF L. K. SEYMOUR

Dear Representative Barrett:

This letter responds to your telephone inquiry on July 18, 2003 and to the two letters you faxed to me in connection with use of water for mining purposes by L.K. Seymour in the Salmon/Cobalt area.

Mr. Seymour's letter to Terry Hershey of the U.S. Forest Service refers several times to a "water permit". I was unable in my research of water rights to find a permit, license or decree for the mining use of Mr. Seymour or his predecessors in interest.

Department records do show, however, that on January 18, 2000, Ken Seymour and Dick Wright filed Snake River Basin Adjudication ("SRBA") claim no. 75-13946 with the department based on "beneficial use" of water. On June 12, 2002, claim no 75-13946 was divided into SRBA claim nos. 75-14072 and 75-14073. Claim 75-14072 is in the name of Ken Seymour and Dick Wright and claims the diversion of 1.0 cubic feet per second of water from Rabbit Creek tributary to Napias Creek for mining purposes. The priority claimed is May 1, 1956 with a season of use from May 1 to November 1 each year. Enclosed for your reference is a copy of the claim.

The department does not have as much information on the water use as it normally would have had if the claim had been based on a permit, license or decree. The claim will be reviewed as a part of the SRBA and together with other SRBA claims in basin 75 will be recommended to the SRBA court in January 2005. In addition, due to the remoteness of the location, the department does not have records of water diversion and use, since the use is not within a water district and has not been delivered by a watermaster.

The department sometimes requires screening of diversions but has not in this case, since the water use is represented by a claim and not by a permit or license issued by the department. As with any water right, when water is not being beneficially used for the authorized use, the right holder should not divert the water from the

source. Rights of way or easements for ditches and conveyance systems are privately owned appurtenances and are not regulated or administered by the department, since department authority is related to the use of the state's public water.

I wish I could have found more information on this water use but hope this letter provides sufficient information and addresses the concerns you expressed over the phone.

If I can provide additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, reading "L. Glen Saxton". The signature is fluid and cursive, with the first name "L." being small and the last name "Saxton" being larger and more prominent.

L. GLEN SAXTON, P.E.
Administrator
Water Management Division

Encl: 1

c: IDWR - E. Region
Bob Foster

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 75-14072

WATER RIGHT NUMBER: 75-14072

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	KEN SEYMOUR 2500 ROSS AVE IDAHO FALLS, ID 83404 (208)522-6282
Current Owner	DICK WRIGHT 1335 AZALEA DR IDAHO FALLS, ID 83404 (208)523-4172

Priority Date: 05/01/1956

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
RABBIT CREEK	NAPIAS CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
MINING	05/01 to 11/01	1.000 CFS	
	<u>Total Diversion:</u>	1.000 CFS	

Location of Point(s) of Diversion

RABBIT CREEK	SE1/4SW1/4	Sec. 29, Twp 22N, Rge 20E, B.M.
LEMHI County		

Place of Use

MINING

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N	20E	32		X	X		X	X	X	X									

Conditions of Approval:Remarks:

1. Explanatory THIS RIGHT IS A SPLIT FROM FORMER RIGHT 75-13946

Comments:Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 75-14072

Dates and Other Information:

Claim Received Date: 6/12/2002 2:20:10 PM

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

LENORE HARDY BARRETT
DISTRICT 28
CUSTER, LEMHI, CLARK
& JEFFERSON COUNTIES

HOME ADDRESS
P.O. BOX 347
143 WEST PLEASANT
CHALLIS, IDAHO 83226
(208) 879-2797
FAX (208) 879-4257

**RECEIVED****JUL 18 2003**

Department of Water Resources

COMMITTEES
REVENUE & TAXATION
RESOURCES & CONSERVATION
LOCAL GOVERNMENT

House of Representatives State of Idaho

fax t r a n s m i t t a l

to: Glen Saxton, Administrator
~~Water Management Division, IDWR~~

fax: 208-327-7866

from: Representative Lenore Hardy Barrett
fax: 208-879-4257
phone: 208-879-2797

date: 07/18/03

re: Seymour, Ken

Pages: (10)

NOTES Pursuant to phone conversation, find attached material.
Mr. Seymour's phone # is 208-522-6282. e-mail address is
kenscy@ida.net
Please cc: your reply to my request to Mr. Seymour.
Thanks!

Fax Copy

2500 Ross Avenue
Idaho Falls, Idaho 83406
June 30, 2003

Mrs. Lenore Barrett
Idaho State Representative
Challis, Idaho

Re: Fax on water laws

The two letters which we addressed in our telephone conversations are attached to this fax.
Thank you for taking the time to look into this for us.

Essentially, we need a reading on the Idaho water laws that cover the issues in the letters, especially the enforcement of those laws. We need clarification of the authority of the US Forest Service to limit the use, determination of beneficial use, design and placement of headgates, fish screens, and the like. Perhaps a letter from the Idaho Water Resources could address the issues raised in the two letters. We wish to clarify that we committed no violations of any rule or law to cause the added restrictions given to us.

Thank you again.

L. K. Seymour

Ken

327-7910 / Alex Saxon



United States
Department of
Agriculture

Forest
Service

Salmon-Challis
National Forest

Salmon/Cobalt RD
50 Hwy 93 South
Salmon, ID 83447

File Code: 2810-5086

Date: June 11, 2003

Ken Seymour
2500 Ross Avenue
Idaho Falls, Idaho 83406

Dear Ken:

We have received your letter and unsigned Forest Service Evaluation for the Paradise Gold Claim on the Salmon/Cobalt Ranger District, Salmon-Challis National Forest. By not signing the evaluation form, which modifies your existing plan of operations, you are not authorized to continue exploratory operations at this time.

Plans for proposed exploration activities on National Forest (NF) Lands are submitted under the authority of the 1872 Mining Law. The decision to approve or require the modification of such plans is guided by the Forest Service (FS) Mining Regulations contained in 36 CFR 228. These regulations require that each plan be evaluated in a manner meeting the requirements of the National Environmental Policy Act (NEPA). The environmental analysis establishes decisions, mitigation measures, and monitoring requirements etc. that are necessary to protect surface resources. An operator is required to modify their plan to include the mitigation measures etc. prior to the Forest Service approving the plan.

Your letter identifies a contention that the Forest Service wishes to control the water on your claim. This is not true. The Forest Service reserves the right to regulate your water flow when it is not being beneficially used for mining. The Idaho State Department of Water Resources requires that water be put to beneficial use. In your case that is mining. When the claim area is unoccupied and water continues to flow through mining equipment unregulated this is not a beneficial use and in some instances may lead to significant surface disturbance. It is our responsibility to ensure that your operation is designed to minimize or prevent significant adverse environmental impacts on surface resources.

The State of Idaho laws further require that all water diversions have a headgate that is controllable, lockable, measurable and has a screen. Our latest plan modification asked you to install a headgate, with a 3/32 inch screen size, nearer Rabbit Creek. The smaller screen size is a requirement by the National Oceanic and Atmospheric Administration - Fisheries (formerly the National Marine Fisheries Service) to prevent small fish from traveling down the ditch during operations. Neither requirement is an attempt to control the water flow to your operation.

Your letter identified a number of other issues that would best be resolved through face to face communications. Ray Henderson, Dave Sabo and myself are available to meet with you at your convenience to resolve these issues. In order for you to operate this field season, the evaluation form must be signed and returned to this office. If you have any questions or wish to meet to further discuss your concerns, please call Dave Sabo or Ray Henderson at 208-756-5100.

Sincerely,



TERRY HERSHEY
District Ranger

Enclosure
Cc: Donnie Hudson

2500 Ross Avenue
Idaho Falls, Idaho 83406
May 12, 2003

Terry Hershey, District Ranger
US Forest Service
Salmon-Challis National Forest
RR 2, Box 600 Hwy 93S
Salmon, Idaho 83467

We have received your approval of an extension to our 4-1-99 Operating Plan for the Paradise Gold Claim. We initially requested this extension, but the FS turned it down, telling us that the impact assessments must be updated. As a result, we went to substantial effort to derive a new 5-year plan. Then the FS reversed itself again, and is now approving the extension. However, the FS added additional conditions to the plan that are not acceptable to us. The conditions appear to be directed mainly at still another attempt to control the water on the claim. We will continue to operate the claim under the old Plan. We seriously question that the requirements for "significant surface alterations" under 36CFR228.4(a) are met that would even require an Operating Plan. A comprehensive list of FS responsibilities in CFR 228 makes no mention of water control beyond that of water quality. We foresee only that postponement of the 5-year submittal will only result in still more vacillation and more paperwork for us when this extension expires.

The entire history of our relationship has been one of vacillation, conflicting directions, introduction of inconsequential requirements, and delay. The FS has imposed unwarranted changes to a claim that has been operated for decades with no known serious impacts.

We will briefly review the entire situation to show our reasons for this position.

In the beginning, we were delayed a whole year when the FS demanded that we obtain a temporary water permit for the operation. Had the FS known anything about the State water permits, they would have known at that time a moratorium had been placed on temporary permits several years earlier and was still in effect. The FS representatives well knew that a valid (permanent) permit application had been made by a previous owner, but said nothing. Your full-time 'Hydrologist' submitted a formal objection to that application, and the application was left hanging without followup after the FS intervened. In spite of this, the FS approved the mining operation with no water permit for several years prior to our purchase of the claim. Water has been used for as long as the claim had been in existence, for at least 40 years. The FS also should have known that such continued use guarantees water rights even where no water permits had been formalized, according to State water laws. The authority for administration of all water used in the State lies with the State Water Resources Department. This authority has repeatedly been

overlooked by FS, and this practice seems to be still with us. Efforts to change the water use, flow rates and other water issues are included in every facet of our operation, and every review document which we submit, even after we obtained the permit.

Because of the temporary permit moratorium, our only alternative at that time was to formally seek a permanent State water permit to comply with the FS direction. After a laborious and costly legal process, we obtained the permit based on the extensive previous use. In spite of this, the FS has repeatedly attempted to control the water, and their employees have made unwarranted adjustments to the flow. We had carefully gauged the flow and had regulated the split to assure we did not exceed our formal allotment nor dewater Rabbit Creek (confirmed by actual measurements) without continual adjustments.

During the process of completing the State permit, we continued the efforts to obtain approval of our Operating Plan by the FS, and the FS vacillations began. Examples: the ditch was "an archeology site" and could not be repaired. Next, the ditch could be repaired only if we used pipe to breach the washouts/leak areas, but the large leakage overflow sites near the old cabin (butcher shop) site were not to be touched. We could only explore for minerals in the areas below the ditch, reducing the effective size of our claim to less than 1/4 the total claim area. (This violates Title 30, Chapter 2, Sec 26 of the US Code). We were denied the use of an existing settling pond to treat the wash plant effluent, a condition that was also later rescinded.

We were repeatedly admonished to avoid any changes to the flow split, nor attempt to change the flow from the current split. When we were not running a wash plant, we were told to bypass flow above the Blue Moon claim entry pipe into one of two existing paths flowing directly into previously mined rock piles to continue existing conditions unchanged. Water flowing through the Blue Moon claim ends up at the same place as the bypass flows, but we and the Blue Moon owners conceded to divert the flow as requested. The effluent paths are well-developed washes, clear evidence that they had been used for a very long time. Water flowing through the Blue Moon claim area passes back to the same washes as when flow was diverted. The current FS plan to shut down the entire ditch when wash plants are not in use would dry out several large wash areas (mentioned above) which we have not been permitted heretofore to alter or repair in any way. Some are sufficiently large to represent a substantial effort and expense, and would dry out extensive forest areas now continually wetted from the ditch leaks.

Use of temporary plastic dams was initially forbidden, but FS eventually relented on this restriction. After only operating for a small part of a single season, we were banned from the area by the FS because of forest fires, but the Beartrack Mine operation was not interrupted. This was unequal treatment, since any imminent danger warnings could easily have been passed on to us (we are only about 2 miles from Beartrack and located on the same road). The area adjacent to Beartrack was used to load the helicopters fire drop tanks, so FS and firefighting personell were present there throughout the fire duration. They could also have notified us should fire spreading threaten the area. We lost most of that summer's operation as a result.

Last season was still another chapter in water control. The water permit was issued to the entire claim block, and was listed in the names of the Paradise owners since owners of the other

operating claim (Blue Moon) were shut down by the FS pending issuance of the permit in 2000. Their individual names were not placed on the permit because they were shut down. In 2002, the FS forced us to formally split the water permit into fractional shares to each of the individual owners, with still more legal work and delays.

Late in 2002, the Blue Moon claim operator was accused of hydraulic mining for using a small (3/4- inch diameter) garden hose to wash off the gold bearing clay adhering to large rocks, since these rocks are too large to pass through the piping/slurry system. The FS reacted to this small hose, called it a violation, and FS employees destroyed the carefully established flow split by placing large stones in the creek in an attempt to shutdown the ditch entirely. Water to the claim had been diverted at the approved entrance point normally used, and sanctioned by the FS. These small wash hoses had been in use in this fashion for several preceding years. Numerous FS inspections had been carried out during this period with no issues raised by the inspectors. No soil was ever flushed from the work site excavation directly to the sluice. (In earlier operations by others on immediately adjacent claims, large hydraulic operations had been approved by the FS along with use of heavy excavation equipment). The operators of the Paradise Claim had nothing to do with this incident, but were punished anyway, and now are faced with the burden of restoring the flow-balance, new restrictions, and more new construction.

The FS yet again is changing its position by requiring a headgate to stop all flow into the ditch. At one time, the FS informally asked us to pipe the entire ditch, for reasons we have yet to learn. A fish screen with 1/4 inch openings was previously required, and was installed near the entry to the ditch (all water is screened). The current correspondence requires still another screen to cover the entire ditch entrance, and reduces the screen openings to 3/32 of an inch, but only for the current year. This small an opening will plug with debris in almost no time, and is impractical and not acceptable to us. Our screen are located nearly 1/2 mile from our work site and would require walking back and forth over very rough terrain and fallen trees. If FS wants a 3/32 screen, then they should install and maintain the screen, and keep it clear of debris. An entrance headgate would require a trip back for every adjustment of flow, so we also reject this modification.

Furthermore, the new extension requires use of a single wash system at a time, even though our water permit could accommodate several. The reasons for this requirement were not revealed to us but appears to be still more water control.

Finally, the FS will require their representatives to make more frequent silt inspections in the sluice box effluent stream even though there is absolutely no way this water can reach Napias Creek without multiple filtering and settling stages in which any silt would be removed. This action infers that the operation was not being done to FS satisfaction. Should all clean up steps fail, the effluent is released to a huge area of previously dredged rocks which prevents it reaching the main stream. The FS sells grazing permits allowing dozens of cattle to freely wade the streams and trample stream banks within the claim area. More silt in the stream and more harm to the environment is caused in this fashion than could ever result from releases from the filtered wash stream, which is never released directly.

We were told that the FS is listing the ditch to be studied for potential threats to fish which inhabit

or "potentially might inhabit" Rabbit Creek. How can fish be threatened in a ditch that is completely screened from fish entry? The words "potentially might inhabit" imply that non-native species may be planted there at some future time, and thence could be found to be threatened. If mining operations present such serious threats, the fish would not currently exist. All the streams in the area are completely surrounded by miles of slash and rock piles from previous mining (for more than 100 years). If significant threats were present through the many years of mining and dredging these areas, it seems apparent that no fish could have survived.

Stringent restoration requirements and access restrictions are imposed in spite of the fact that miles of the streambanks in both directions have been previously dredged, with huge piles of bare rocks piled on either sides of the stream for many miles. About two miles distant a large mine was permitted to remove an entire mountain, leaving bare sheer cliffs and acres of bare soil, but the FS appears to have deep concerns that our manual hand excavations will cause significant damage. Deadfall covers the entire claim, but FS allows no cutting of the fallen trees to improve access to work areas. (This is also against Federal laws, which permits timber to be used in a mining operation, or to clear the path of potential mining sites). We were told in one FS correspondence that we must conclude all work, backfill and restore all areas disturbed prior the the expiration of each Operating Plan. We question the need for periodic renewals of operating plans at all.

Vehicle entry is prohibited except that small A/TVs can enter one trip in the spring and another in the fall only by special permit. The vehicle road to these claim areas was illegally removed (or permitted to be removed) by the FS. A public road leading to Leesburg was substantially altered and elevated 20-30 feet, removing access points leading to roads used for claim access. The roads were then closed and placed behind locked gates. This occurred while the affected claims were under legal operating approvals by the FS, and were in actual operation. Forging Naples Creek by vehicles was subsequently forbidden, although a tributary stream passes through 200-300 feet of FS road bed less than three miles upstream. We believe this violates RS 2477. We are preparing a request for the FS to restore the vehicle road that was removed, or provide unrestricted alternate routes. We believe that federal law requires the FS to permit vehicle access to mining claims.

All these issues accumulate to the appearance of deliberate harassment and denial of our rights to the federal mining and equal protection laws, seemingly in efforts to induce us to give up and abandon the claim. For this reason, we find your revisions to our Operating Plan to be unacceptable.

We suggest the following possible resolutions:

1. We are not using the sluice stream as we continue exploration for the best sites to excavate, and hence the surface disturbance does not meet the "significant" level which would require an Operating Plan. The Operating Plan requirement should be rescinded indefinitely until such time that a "significant" level is attained.
2. Since FS employees destroyed the flow balance, FS should re-establish and re-measure the flow split illegally removed without even notifying us. The Paradise Claim owners committed no violations, and refuse to be subjected to any increased restrictions or

additional work because of the questionable judgement regarding hydraulic mining.

3. A permanent headgate installation shall be by the FS, with all costs born by them. We will continue to direct the ditch bypass flow to the original rock piles adjacent to the claims as agreed, since other headgates have already been installed to accomplish this. Release of the water to the rock/slash piles will be continued as currently, since this practice has been in use for many years, and there is no convincing reason to change it.
4. FS will recognize that the State of Idaho has legal authority and enforces the water permits, and will abstain from attempting to unilaterally change the flow for any reason, such as requiring use of only one sluice, or prohibiting ditch leaks and overflow repair. The ditch is a necessary part of the State Water Right, and should legally accompany that entity. The ditch was built more than 50 years ago, and has perennially been appurtenant to the claim block. Such appurtenances are generally transferred with the claims and water permits as real property by current water laws. We believe this also applies to continuously used access roads.

In summary, we are saturated by the vacillations and inconsequential modifications advanced by the FS at every turn. We will refer our requests and complaints to higher FS authorities outside the Salmon Headquarters, other officials outside the FS, and others in public and political positions for assistance. We are also exploring legal assistance from mining organizations so that some issues may be legally pursued.

As it now appears to us, should the FS desire our vacating the claim and the operation, we would be amenable to any process which recovers our substantial expenditures. Alternatively, we will formally petition under RS 2477 for changes that restore the road for required access, and allows us to use the water permits we own without interference. We will modify our Operating Plan to permit the use of the wash hoses, limited to 1 inch diameter with no augmentation of water pressure. Any soil removed by this practice will be held within the excavation site.

We firmly believe that the FS responses to litigation by others should have no affect to our operations. Furthermore, we see decided unequal treatment under federal laws, but we should be notified in any environmental issues that do affect us. We recall the continuing hassles on these subjects by Beartrack Mine owners, and had submitted comments on the exact same issues in the past. We retain the right of intervention, and will be submitting requests for historical information through the Freedom of Information process for selected FS actions, including grazing permits, logging contracts, wood-cutting and historical data such as road closings and removal, and any actions that deny our equal rights and treatment under the law. The only endangered species in your forests are the forest users, especially small mine operators and loggers.

In your letter you state that three other Federal Agencies will be brought in to assess our ditch for threats to endangered fish. We are amazed that it takes four Federal Agencies to assess a tiny ditch that has all the fish screened out near its entrance. More than half of the ditch has flow only a fraction of the time.

We are performing no actions on this claim that would clearly affect endangered species. We have violated no provisions of our Operating Plan, and have even complied with the verbal requests made by FS representatives. We reject totally the notion that the ditch and every rockpile for 10 miles are archeological entities. If so, why is the FS working to obtain title to the private land along this road via a land exchange?

We regret that conditions exist that cause us to forcefully state our positions in this matter. Unless we hear differently, we will continue our operations unchanged, under our conclusion of no "significance" surface alteration presented. We are returning your form unsigned. Copies of this letter will be forwarded to our congressional delegations and the State officials if these issues are not resolved.

Yours very truly,

L. K. Seymour

R. R. Wright