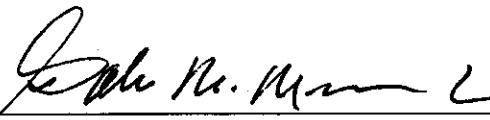


"The Ringles irrigated approximately 35 acres with water diverted from Chipps Creek from approximately 1981 to the present",

is erroneous and contrary to evidence as is confirmed and borne out by IDWR correspondence dated April 15, 1997 and March 15, 2000, copies of which are submitted herewith as Exhibits A and B respectively.

Dated this 28 day of July, 2004.

MARCUS, MERRICK, CHRISTIAN & HARDEE, L.L.P.

By 
Gale M. Merrick
Attorneys for Objector

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of July, 2004, I caused to be served a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND SPECIAL MASTERS RECOMMENDATION** in the above-referenced matter by the method indicated below, and addressed to the following:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
(original)

_____ *HAND DELIVER*
_____ *U.S. MAIL*
_____ *OVERNIGHT MAIL*
_____ *TELECOPY (FAX)*

Peterson Estate
c/o Stephen T. Sherer
P.O. Box 31
Meridian, ID 83680

_____ *HAND DELIVER*
_____ *U.S. MAIL*
_____ *OVERNIGHT MAIL*
_____ *TELECOPY (FAX)*

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

_____ *HAND DELIVER*
_____ *U.S. MAIL*
_____ *OVERNIGHT MAIL*
_____ *TELECOPY (FAX)*

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

☒ HAND DELIVER
☒ U.S. MAIL
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
:

United States Department of Justice
Environment & Natural Resource Division
550 West Fort St., MSC 033
Boise, ID 83724

☐ HAND DELIVER
☒ U.S. MAIL
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
:

Larry and Lynn Beskoon
10098 Round Valley Rd.
Cascade, ID 83611

☐ HAND DELIVER
☒ U.S. MAIL
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
:

Charles L. Honsinger
P.O. Box 2773
Boise, ID 83701

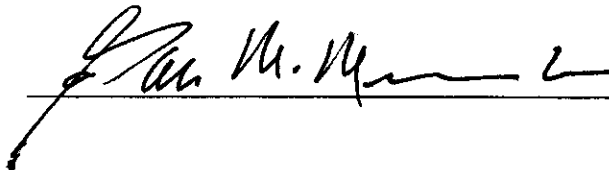
☐ HAND DELIVER
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☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
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Josephine P. Beeman
409 W. Jefferson St.
Boise, ID 83702

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☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
:

Stephen T. Sherer
P.O. Box 31
Meridian, ID 83680

☐ HAND DELIVER
☒ U.S. MAIL
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
:





State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 15, 1997

FREDERICK &/OR GLORIA RINGEL
PO BOX 582
CASCADE ID 83616

Re: Illegal use of Water from Chipps Creek

Dear Mr. & Mrs. Ringel:

The Department of Water Resources (IDWR) received some complaints about construction of a ditch diverting water from Chipps Creek and use of water from Chipps Creek on lands not described by any water right. On July 30, 1997, Gene Gibson of this office visited the site of your point of diversion from Chipps Creek. He walked a recently enlarged ditch and took photographs. Gibson and I compared water rights with the use of water Gibson observed.

We understand that you purchased a portion of water right no. 65-05033 which authorizes the diversion of 5.10 cubic feet per second for irrigation, and 0.12 cubic feet per second for stock water purposes. The entire place of use described by the right is located in Section 7 of T11N, R04E, except for eight acres located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T11N, R03E. Adjudication no. A65-05033 describes a point of diversion located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 7, T11N, R04E, the approximate location of the point of diversion Gibson found in the field. Gibson also verified that the point of diversion had been established at this location for a significant amount of time. Because a water right authorizes a point of diversion at the point of construction, no stream channel authorization permit was required for the work that was done in the stream.

Gibson found a head gate constructed in Chipps Creek that can completely block the Chipps Creek flow and divert it to the northwest in the newly enlarged ditch. At least one complaint received by IDWR complains about the size and magnitude of the constructed ditch. At the present time, however, the possible trespass and damage to other property is not viewed as within IDWR's jurisdiction.

As Gibson walked the ditch, he discovered a channel from the ditch, located approximately in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 7. Water can be delivered from the ditch into the channel, and down to a pond

Frederick &/or Gloria Ringel
August 15, 1997
Page -2-

located in the SE $\frac{1}{4}$ of Sec. 6, T11N, R04W. We cannot find any water right that authorizes diversion of Chipps Creek water to the pond. It has been alleged that you are irrigating from the pond. We cannot find any water right to divert water from the pond in Sec. 6 for irrigation purposes.

This letter is notice that water should not be diverted from Chipps Creek into the pond located in Sec. 6. The channel from the ditch to the pond should be completely shut off unless you can show IDWR that you have a water right to divert water from Chipps Creek for the pond. Finally, any irrigation out of the pond should cease unless you can show to IDWR that you have a water right for irrigation of lands from the pond.

Finally, other water users have water rights authorizing diversion and use from Chipps Creek. Your diversion cannot interfere with earlier in-time water rights.

Respectfully,


Gary Spackman

GS:st

CC: ✓ Kyle Ellis
Jim &/or Carolyn Kling

Frederick &/or Gloria Ringel

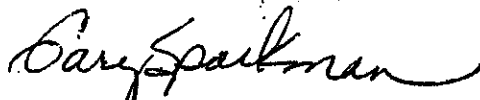
March 15, 2000

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2. Storage in your pond is not authorized by any water right. You should submit evidence to IDWR showing some authority to store water in the pond by April 1, 2000. If no evidence is submitted, you must drain the reservoir until you have a water right to store water at that location.

I am happy to discuss this matter with you further if you would like to schedule an appointment.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman". The signature is fluid and extends to the right.

Gary Spackman

GS:st



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

March 15, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

FREDERICK &/OR GLORIA RINGEL
PO BOX 582
CASCADE ID 83616

Re: Storage and Use of Water in the W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 6, T11N, R04E

Dear Mr. & Mrs. Ringel:

I sent you a letter in August 1997, discussing use of water diverted from Chipps Creek and use of water from Chipps Creek on land not described by a water right. The specific language of the letter stated:

Water can be delivered from the ditch into the channel, and down to pond located in the SE $\frac{1}{4}$ of Sec. 6, T11N, R04W. We cannot find any water right that authorizes diversion of Chipps Creek water to the pond. It has been alleged that you are irrigating from the pond. We cannot find any water right to divert water from the pond in section 6 for irrigation purposes.

Following the mailing of my letter, I met with you and Gene Gibson of this office, who visited your property approximately one week before the letter was written. In a memo to the file dated October 17, 1997, I wrote the following:

I agreed to meet with Ringel in our office with Gene Gibson early one morning. After discussing the matter with Ringel, I discovered that he had filed a change of ownership with IDWR that had not been recorded in our database. I also discovered that I had not completely identified all of the water rights to which Ringel has some interest. Finally, I determined that Ringel did not have a water right to divert water to the pond and irrigate lands as I described in my letter. I informed Ringel that he was not authorized to divert and apply water to those lands from Chipps Creek or its tributaries, nor was he authorized to store water from Chipps Creek in the reservoir. I told him that if he wanted to irrigate the lands, he would be required to file an application for transfer and have it approved by



Frederick &/or Gloria Ringel

March 15, 2000

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IDWR. Ringel agreed to file the application for transfer but was hesitant to do so until the dispute with Ira Peterson's widow was resolved in court. He told me he intended to divert the water in the spring of 1998, and use it on the lands not described as a place of use by any water rights. I advised Ringel that I did not want to commence enforcement action against him, but if he decided to irrigate the lands without a water right, IDWR would issue a Cease and Desist Order to him.

Based on a field examination conducted during late summer of 1999, Kay Walker of this office sent you a letter dated September 3, 1999. She stated:

In looking at the lands covered under the claims, we saw that the greenest field out there was located near your home in the W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 6, T11N, R04E. When we came back to the office I looked at our records and could find no water right for that property. If you are going to irrigate the lands I have identified you need to file for water rights to cover that use.

I once again searched the records of this agency for water rights authorizing a storage reservoir at the location of your pond, and for a water right describing the W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 6, T11N, R04E as a place of use. A small right for stock water and domestic use no. 65-07687 describes a spring source of water in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, T11N, R04E. I searched the field exam records of this water right. It describes a small rectangular catch basin of approximately eight feet by twelve feet in surface dimensions. The large reservoir located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, T11N, R04E, is not authorized by decreed water right no. 63-07687.

Finally, in a letter to Scott VanHoff of this office, dated January 10, 2000, you alleged "there are four + different people from the department working on this file and each sound like they don't know what the other is talking about." I coordinated the contents of this letter with Scott VanHoff, Sue Bock, Kay Walker, and John Westra of this office and Dave Tuthill, the previous regional manager.

Based on the above information, I conclude:

1. There is no water right to irrigate the W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 6, T11N, R04E. Any irrigation of these lands observed by employees of IDWR, or observed by anyone else, evidenced by submittal of an affidavit and complaint submitted to IDWR, will result in issuance of a notice of violation to you.