

Memo

To: file
From: Roger Warner
CC:
Date: 11/2/2006
Re: Kathryn Legge Timber Creek water rights

I had the opportunity to visit the Legge property located on the north side of Henrys Lake and adjacent to Timber Creek. I observed first hand the creek which was flowing approximately 1 cfs and the diversion ditch which was not flowing at the Legge property by which did contain water further upstream.

I walked the ditch with Mr. and Mrs. Legge down to the Gerlach's pond observed that the pond was partially full and obtained photos of the pond and ditch that was the outlet to the pond. The ditch was poorly maintained and was filled in abundance with phreatophyte-type plants that were lush and green. Several gaps were observed to be cut into the bank of the ditch for irrigation purposes but it was apparent that the ditch had not been used for irrigation purposes for many years. It would have been very difficult to pass much water though the plant matter in the ditch.

I walked the upper ditch to the main diversion from Timber Creek and saw first hand the diversion and was related to how the diversion into the ditch was accomplished using boards and sand bags.

After observing the ditch and timber creek, it is apparent to me that the Gerlachs do not have a water right for their pond. They have claimed to be the recipient of pass through water for a commercial right to Staley Springs. However, I could not see where or how that right may have been used beneficially for the Springs resort. Nor has the resort ever recently set the diversion to their benefit of which the Gerlach's enjoyed. The Gerlach's have been sent a "Show cause" letter for explaining their right to divert water and they have responded by phone. I will talk to them when they return from a business trip to Africa.

July 1, 2004

John and Barbara Gerlach
Gerlach Nature Photography
P.O. Box 259
Chatam, MI 49816

CERTIFIED MAIL

**Re: Potential unauthorized use of water right for pond off of Timber Creek,
Henrys lake, Area, Idaho**

Dear Mr. Gerlach:

It has come to our attention that you or someone under your direction is diverting water from Timber Creek for the purposes of maintaining a pond on your property. I have performed a water right search of the Idaho Department of Water Resources water rights database and find no water right in your name or associated with a pond in your area. Since I cannot find a water right to divert water for your pond, I am requesting you to help me in this regard. I request the following:

1. Identifying water rights that may cover your development if our records or understanding of facts is incorrect.
2. Cease further diversion of water from Timber Creek, if you do not have a right to do so.
3. And/or obtain a valid water right for the development.

Please respond to this office as soon as possible, but no later than ten (10) days from the date of this letter to discuss scheduling a conference and/or resolution of this matter. Please note that the diversion of water in Idaho without a valid water right is illegal pursuant to Section 42-351, Idaho Code, and may be subject to civil penalties of up to \$300 per irrigated acre per annum, pursuant to Section 42-1701B, Idaho Code.

You may contact me directly at 208-525-7161 regarding questions and/or resolution of this matter.

Respectfully,

W. Roger Warner
Water Rights Supervisor – Eastern Region