



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
February 11, 2009

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Re: Points of Diversion on Farmers Ditch

Dear Jesse Creek Water Users:

This letter is a follow up to a question that was asked of me at our hearing regarding Basin 75 water rights in Salmon, Idaho on September 11, 2008. At that hearing, a number of you asked me whether renaming Farmers Ditch to Jesse Creek and characterizing it as a natural channel of Jesse Creek (as proposed by Robert Blackadar) would have any practical effect on the water users who receive their water from Farmers Ditch.

Since our hearing, I have had an opportunity to discuss this issue with Tom Bassista, a Stream Protection Specialist for the Idaho Department of Water Resources. It is Mr. Bassista's opinion that the Farmers Ditch is not a natural channel and should not be recharacterized or renamed. See attached memorandum from Mr. Bassista. However, if the Snake River Basin Adjudication District Court were to agree with Mr. Blackadar and find that the ditch is actually a natural channel of Jesse Creek, this would likely have significant implications for the water users on Farmers Ditch. Idaho Code § 42-3803(a) provides that "No person shall engage in any project or activities which will alter a stream channel without first applying to and receiving a permit therefore from the director." Thus, if the ditch were characterized as a natural stream channel, water users who insert structures into the channel to divert water (such as a canvas dam) would now need to apply for permits to

Jesse Creek Water Users
December 15, 2008
Page 2

place their diversion structures into the stream channel. A water user would also need to get a permit to be able to conduct maintenance work on the channel. In short, activities that are not currently regulated would become subject to regulation and require a permit from the Idaho Department of Water Resources.

I hope this information is helpful to you. If you have any questions about this letter, please do not hesitate to contact me at (208) 287-4811.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Baxter', with a long horizontal stroke extending to the right.

Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources

Attachment



State of Idaho

DEPARTMENT OF WATER RESOURCES

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EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

MEMORANDUM

December 18, 2008

TO: Monica Van Bussum

FROM: Tom Bassista, ^{T.B.} Stream Protection Specialist, Eastern Regional Office

RE: Jesse Creek Stream Channel and Farmers Market Point of Diversion

This memorandum is in reference to our site visit made to Jesse Creek and the Farmers Market Point of Diversion (POD) near Salmon, Idaho on October 1st, 2008. The purpose of the site visit was to assess whether the channel heading off Jesse Creek at the Farmers Market POD should be considered a jurisdictional channel under Idaho Stream Protection Act (Idaho Code Section 42-3802). The definition of stream channel means a natural watercourse of perceptible extent, with definite bed and banks, which confines and conducts continuously flowing water. It is my opinion that the channel heading off Jesse Creek at the Farmers Market POD should not be considered a natural steam channel but should be considered an irrigation ditch or canal. The reasoning for my opinion is that it appears that the channel coming off of Jesse Creek at the Farmers Market POD was created to carry water, it is manipulated by a diversion structure, and it does not reflect a natural water course based on the topography of the area. I recommend the following:

1. Keep the Farmers Market POD as the legal POD to be consistent with historic irrigation use on the Farmers Market Canal.
2. Maintain the Jesse Creek channel as the natural watercourse which would carry most of the spring run off flow into the Salmon River.
3. Because Jesse Creek has a direct connection to the Salmon River I recommend only the legal amount of water be diverted through the Famers Market diversion structure with all non allocated water going into Jesse Creek.

Please contact me if you have any questions or concerns.

Signature