



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 8, 2009

Rob Harris
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405

*RE: SRBA Subcase Nos. 22-228, 22-674B, 22-674C, 22-674D, and 22-674E
(Moulton et al.)*

Dear Rob,

Thank you for your letter dated July 13, 2009 regarding the point of diversion for the above referenced water rights. I have discussed the letter with the Department. The Department believes that your proposed solution is a good one and can agree with its implementation for the splits of water right no. 22-674. The Department is willing to describe the point of diversion for the splits of water right no. 22-674 as the Meyers Headgate, where water is diverted from Fox Creek, but then to include a condition stating that the water rights shall be measured at the Dewey Headgate. The Department proposes the following condition:

The appropriator is entitled to the quantity of water described above at the point of measurement in T4N, R45E, S26, NENWSE

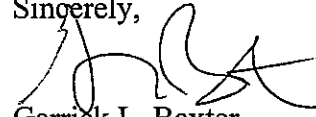
I believe that this is the correct legal description for the Dewey Headgate. Please double check this with your clients.

From reading the documents in the Crow v. Carlson file, it is clear that water delivery has been a long running frustration for some of the water users on Myers ditch. Having this condition on the splits of 22-674 will be the first step in resolving their water distribution problems. However, as previously discussed, the Department and Water District 01 do not regulate ditches. Thus, the second step to resolving the water distribution problems on Myers ditch will be for the selection of a ditch rider pursuant to Idaho Code § 42-901 for the Meyers ditch. Only through the full regulation of the Meyers ditch by a ditch rider can the problems in this area be addressed. The Department strongly recommends that your clients pursue the appointment of a ditch rider to facilitate proper delivery of water from Meyers Ditch.

As for water right number 22-228, the Department decided that it will not change its original recommendation for this water right, as it was not part of the Crow v. Carlson case.

Please share this letter with your clients and let me know if this is an acceptable solution. If you have any questions or comments, please do not hesitate to contact me at 287-4811.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Baxter', with a stylized flourish at the end.

Garrick L. Baxter
Deputy Attorney General, IDWR

cc: Ernie Carlsen
Michael Holliday