



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER

Governor

November 9, 2018

GARY SPACKMAN

Director

DOUBLE C & J LAND CO INC  
CO JOHN HOFF  
990 JENKINS CREEK RD  
WEISER ID 83672

**Re: Notice of Intent to Investigate — Potential Unauthorized Diversion or Storage of Water  
(Case No. E2018-1350)**

Dear Mr. Hoff:

The Idaho Department of Water Resources (Department) received a complaint on September 27, 2018 regarding water storage in the Jenkins Creek drainage. The complaint generally alleges that you have illegally diverted, stored, and used water in connection with Monroe Reservoir and Jenkins Creek Reservoir. Specifically, the complaint alleges 1) you have stored Jenkins Creek water without a valid water right; and 2) you have operated Monroe Reservoir and Jenkins Creek Reservoir together to accomplish multiple fills of Jenkins Creek Reservoir without authorization to do so. The purpose of this letter is to discuss the Department's preliminary findings regarding these allegations and give you the opportunity to respond to the complaint and the Department's findings.

Regarding the first allegation, the Department finds no water right that authorizes storage of Jenkins Creek in Monroe Reservoir. Water right no. 67-2044 authorizes you to divert up to 320 acre-feet (af) of Monroe Creek water for irrigation storage purposes each year beginning November 15 until March 15. The Monroe Creek water diverted under 67-2044 may be stored and held in Monroe Reservoir<sup>1</sup> year-round. Right 67-2044 does not authorize diversion or storage of Jenkins Creek water. Although Monroe Reservoir is constructed on the Jenkins Creek Channel, the Department has not identified a valid water right or other authorization allowing you to divert and capture Jenkins Creek water into Monroe Reservoir.

The Department's preliminary conclusion is that you must operate Monroe Reservoir at all times in a manner that passes any inflows in excess of the amount you are injecting into Jenkins Creek from Monroe Creek pursuant to water right 67-2044. Note that, during a discussion with the Department on October 18 and 19, 2018, you stated that your Monroe Creek diversion is in disrepair and you are not able to divert Monroe Creek water pursuant to water right no. 67-2044. Yet, you also described that you close the outlet structure and store water in Monroe Reservoir during the non-irrigation season. This practice suggests you routinely store Jenkins Creek water in Monroe Reservoir.

Because you are not able to divert Monroe Creek water and you have no authorization to store Jenkins Creek water, you must immediately open the discharge structure in the Monroe Dam outlet and pass all water until you repair your delivery system and begin delivering water from Monroe Creek into the reservoir pursuant to water right 67-2044.

Permit No. 87-15333  
Protestant's Exhibit

118

<sup>1</sup> The face of the right does not define a storage place of use, so it does not appear to require the water be stored in Monroe Reservoir, but it also does not prohibit it.

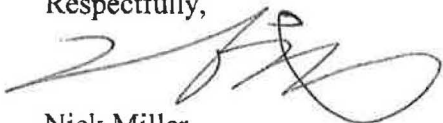
If you believe you have a water right or other authorization to impound Jenkins Creek water in Monroe Reservoir, or if you believe you operate Monroe Dam in a manner that does not store Jenkins Creek water, please provide the Department with a written explanation.

At this time, the Department finds that the second allegation in the complaint does not cause an immediate concern. The complaint suggests that you continuously divert water into Jenkins Reservoir to replace water lost to a significant leak in the Jenkins Creek Reservoir Dam and that your existing water rights do not authorize that activity. The Department has reviewed your water rights and records from the Department's Safety of Dams Program (Dam Safety) regarding Jenkins Creek Reservoir. Your water rights authorize you to store up to 690 af of Jenkins Creek water annually and to divert at a rate of up to 14.5 cfs to storage and an additional 9.06 cfs for direct irrigation. Dam Safety records report that Jenkins Creek Reservoir has a capacity of approximately 175 af. Additionally, Dam Safety's *Jenkins Creek Dam Leak Assessment* estimated an annual loss rate of approximately 80 af. The Department concludes that once you fill Jenkins Creek Reservoir (175 af), your water rights authorize you to completely "refill" the reservoir several times throughout the year. The large storage volume (relative to the size of the reservoir) and diversion rate available under your rights suggest the reported refills are not inconsistent with your water rights. As a result, the Department is not requesting any action from you regarding this second allegation.

Your response to the first allegation is necessary to determine if a formal enforcement action can be avoided. Please respond to the first allegation and the Department's analysis by November 23, 2018. Your response should include a description of how you operate or intend to operate Monroe Reservoir to avoid storing Jenkins Creek water, or a description of what authority you believe you have to store Jenkins Creek Water in Monroe Reservoir.

You may contact me directly at 208-334-2190, email at [nick.miller@idwr.idaho.gov](mailto:nick.miller@idwr.idaho.gov) or you can mail your reply to me at the address above. I appreciate your help in clarifying the issues above.

Respectfully,



Nick Miller  
Manager, IDWR Western Region

cc: Norman Semanko  
Cherie Palmer-Department State office, Enforcement

RECEIVED

SEP 27 2018

DEPARTMENT OF  
WATER RESOURCES

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BEHLE &  
LATIMER

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Law Corporation

Norman M. Semanko  
Attorney at Law  
Direct 208.562.4909  
NSemanko@parsonsbehle.com

September 27, 2018

**VIA HAND DELIVERY**

Director Gary Spackman  
Idaho Department of Water Resources  
322 E. Front St., Suite 648  
Boise, ID 83720-0098

**Re: Complaint Regarding Unauthorized Water Diversion, Storage  
and Use by Double C & J Land Co, Inc. and John Hoff**

Director Spackman:

Pursuant to Rule 240 of the Idaho Rules of Civil Procedure, IDAPA 37.01.01, the following written complaint is hereby submitted on behalf of our client Eckhardt Family LLLP. Your immediate attention and action is requested.

Person Complained Against

The person complained against is Double C & J Land Co, Inc. and John Hoff (Hoff).

Facts Constituting Violation of Law

Hoff has diverted, stored and used water without a valid water right, or not in conformance with a valid water right. In particular, Hoff has illegally diverted, stored and used water into and from two reservoirs on the upper portion of Jenkins Creek, both located on our client's property, thereby directly impacting the water resources in the area.

**1. Illegal Diversion, Storage and Use of Water from Jenkins Creek and Its Tributaries**

Water Right No. 67-2044 (Double C & J Land Co, Inc. (John Hoff)) authorizes the diversion, storage and use of water from Monroe Creek for irrigation of the place of use. The water right does not authorize the diversion, storage or use of water from Jenkins Creek or any of its tributaries for irrigation of the place of use. While we understand that water stored under this water right may be injected into Jenkins Creek for delivery downstream, that does not authorize the diversion to storage of water from Jenkins Creek or any of its tributaries. Hoff has diverted, stored and used water from Jenkins Creek and its tributaries without a valid water right, or not in conformance with a valid water right.

Director Gary Spackman  
September 27, 2018  
Page Two

## **2. Illegal Refill and Use of Storage**

Water Right Nos. 67-02097A (Jenkins Creek) and 67-14247 (unnamed streams tributary to Jenkins Creek) authorize the diversion to storage of water into Hoff's two upstream reservoirs. These water rights are both owned by Double C & J Land Co, Inc. (John Hoff). Significant leaks in Hoff's lower reservoir have continually and significantly depleted the storage from the reservoir. Hoff has refilled this storage continually with water from Jenkins Creek and its upstream tributaries, as well as the Monroe Creek water diverted into the upper reservoir, and delivered the water for use downstream, without authorization to do so and with significant impacts on the water resources of the area.

### Controlling Law

This matter is controlled by I.C. Sec. 42-351(1), prohibiting the diversion and use of water without a valid water right, or not in conformance with a valid water right, and I.C. Sec. 42-1701B, setting forth procedures for enforcement by the director.

### Relief Desired

The relief requested includes investigation of Hoff's illegal diversion, storage and use of water, issuance of one or more written notices of violation, and injunctive relief to cease and desist the illegal diversion, storage and use of water, pursuant to I.C. Secs. 42-351(3), 42-351(4) and 42-1701B.

Please direct all written responses and communications regarding this matter to:

Norman M. Semanko  
Parsons Behle & Latimer  
800 W. Main St., Suite 1300  
Boise, ID 83702  
[nsemanko@parsonsbehle.com](mailto:nsemanko@parsonsbehle.com)

Thank you for your prompt attention to this matter.

Sincerely,

  
Norman M. Semanko

cc: John Hoff, Double C & J Land Co, Inc.



## Palmer, Cherie

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**From:** Norman M. Semanko <NSemanko@parsonsbehle.com>  
**Sent:** Tuesday, October 2, 2018 9:03 AM  
**To:** Miller, Nick  
**Cc:** Spackman, Gary; Palmer, Cherie; Boe, Erik  
**Subject:** Complaint against Hoff's Illegal Water Diversion, Storage and Use

Nick Miller,

Please acknowledge receipt of our complaint against John Hoff's illegal water diversion, storage and use, submitted to the Director on September 27, 2018. Further, please advise who this matter is being assigned to and when we can expect action on the complaint.

As you know, Hoff's water rights have been utilized as the primary basis for his complaints about our client's stock water ponds. He will presumably rely on these same water rights in protesting our client's pond applications. Hoff's illegal diversion, storage and use of water, outside the authority contained in his water rights, should not be allowed to continue, particularly as it impacts our client's stock water ponds.

We look forward to receiving an update as soon as possible.

Thank you.

Regards,

Norman Semanko



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Law Corporation

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