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DEPARTMENT OF
WATER RESOURCES

William G. Burkhart
10925 Netherland
Boise, ID 83709
(208) 375-3296

September 29, 2020

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

Re: Conflict with Water Right Number 63-4603 Lucky Silver Mine Spring, Pearl, Idaho

Dear Mr. Spackman:

On September 10, 2020, William Bean, a neighbor, informed me that he is going to divert water from the Lucky Silver Mine Spring, the authorized point of diversion for my Water Right No. 63-4603 to his ranch house, an estimated one to two miles to the west, by pipeline. William Bean stated that if I continue to rent my pasture to him for his livestock, he would divert enough water to keep my stock watering tank full and when the livestock was removed, the water would be shut off. If I disagree with his plan he would post "No Trespassing" signs, not allowing me to divert water from this source to my property as authorized in Water Right No. 63-4603. Water diverted from the Spring under Water Right No. 63-4603 flows to my property via a pipeline that has been in place for decades with full knowledge by the Beans.

My late father and I have used this water for an estimated seventy-five years my Dad first then together and now just me. The water source for this ranch has been active since 1945 in the family of Joe G. Burkhart. Before the above date, my grandmother on my mother's side of the family, Elizabeth O'Neill, used it from the 1920's. The water is used for domestic, garden, cattle pastures, and fire fighting for ranch buildings. This is a heavy cheatgrass area and therefore water for firefighting is essential. The amount of water in summer months is very little. Creeks and other sources slow down and some dry up until late fall.

After this water leaves my stock tank, it joins a very shallow creek and flows through my property and joins Willow Creek via Pearl. By diverting this water source, it could cause this creek not to flow sometimes during the year, in my opinion. The purpose of this writing is to ask what rights I have, if any, and what counsel you can give me, going forward with this matter. If possible, I would like to avoid the necessity of retaining counsel and becoming involved in a costly legal proceeding to enforce access to my adjudicated water rights. As IDWR administers and enforces water rights, I seek help from you on the best way to enforce my rights. Perhaps a letter from IDWR informing Mr. Bean that he has no right to divert water from the Spring or to prevent my access to the Spring would be helpful.

I am sending this letter to you because there may be a conflict of interest with the local water district, as my understanding as one of the members on the Board of the water district, that the Pearl area is in is related to the person wanting to divert the water. I have not had any previous problems with this water district.

Thank you for your attention to this matter.

Sincerely,



W.G. Burkhart

MEMORANDUM

DATE: 10/13/20

TO: 63-4603

FROM: Phill Hummer, Water Rights Supervisor

RE: Conflict Involving Lucky Silver Mine Spring Letter

On October 2, 2020, the Department received a letter from W.G Burkhart, water right owner of right no. 63-4603. The letter outlines an access issue Mr. Burkhart is having with the owner of the property where one of the authorized POD are located. I called Mr. Burkhardt on October 7, 2020 to get some additional information, discuss the issue, and provide some information.

Right no. 63-4603 authorizes diversion from several springs in the Willow Creek drainage for stockwater, domestic use, and the irrigation of 1.0 acre on property in Administrative Basin 63 about 9 miles East of Emmett, Idaho. According to Mr. Burkhart all the springs are intermittent and dry up at different times throughout the year, except for the Luck Silver Mine spring, which is the most reliable. The diversion at issue is an 1 ¼" inch pvc pipe that comes out of the collapsed entrance tunnel to the Luck Silver Mine located in the NWNW of section 14, township 6N, range 1E. According to Mr. Burkhart the spring is located on property owned by William Bean. According to the most current parcel ownership records available to IDWR the property is owned by James and Marianne Bean. Mr. Burkhart indicated the diversion system was developed by his father and the property owner at the time without a written access agreement.

The issue is that William Bean has told Mr. Burkhart that he plans to shut off the diversion when there are no stock present and to divert water from the spring to his house. He said that Mr. Bean might post no trespassing signs and not allow him access to the spring.

I discussed the history of the water right with Mr. Burkhart during our phone conversation and we discussed the fact that a water right may not grant authorization to access private property. I told Mr. Burkhart that I couldn't make a ruling or comment on whether or not he can legally access the point of diversion in question but I told him Title 42 Chapter 11 of Idaho Code contains statues pertaining to rights of way and legal access. I also informed him that he may have a right to access the property according to eminent domain under Title 7 Chapter 7 but that I could not confirm his rights. I suggested he read these laws or get legal advice to determine his legal standing. I also told Mr. Burkhardt that there were no other active water rights from that spring according to current Department records and that Mr. Bean's use of that spring would not be authorized under a recorded water right.

Mr. Burkhart told me he was going to try to work with the property owners to reach some agreement. But he would work with local police and legal counsel if needed. He asked if he should report any developed use without a water right and we discussed the procedure for working with the regional office to report potential illegal uses of water.