



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

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DIRK KEMPTHORNE  
GOVERNOR

April 19, 2000

KARL J. DREHER  
DIRECTOR

RECEIVED

APR 21 2000

Department of Water Resources

Bryan Donaldson  
JUB Engineers Inc.  
212 10<sup>th</sup> Ave. South  
Nampa, Idaho 83651

Re: Caldwell Irrigation Lateral District / Pioneer Irrigation District – Points of Diversion

Dear Bryan:

In December 1999, you wrote me a letter describing a proposed change in the delivery of water to the Caldwell Irrigation Lateral District (the Lateral District). The Lateral District receives its water from Pioneer Irrigation District (Pioneer). Water right filings with the Idaho Department of Water Resources (IDWR) by Pioneer describe several sources of water, although most of its water is diverted from the Boise River. The Lateral District is experiencing difficulties with deliveries of its water through the traditional delivery systems. Your letter proposes that Pioneer discharge some of the Lateral District's water into Wilson Drain. The water would flow downstream into Indian Creek, a natural stream channel. The Lateral District proposes to pump the Pioneer water from Indian Creek at two new points of diversion on Indian Creek. I understood your letter to be asking what IDWR may require before Pioneer water could be discharged into Wilson Drain and subsequently rediverted from Indian Creek.

I responded by letter in January 2000, suggesting that "Pioneer Irrigation District/Caldwell Irrigation Lateral District file the appropriate application for transfer to add a point of diversion to water rights of Pioneer Irrigation District." We subsequently discussed the filing of an application for transfer in this office.

Following our conversation, I read the language of Idaho Code § 42-105, which addresses the commingling of diverted water in a natural stream and the rediversion of the water from the natural stream at a downstream location. The statute reads as follows:

The water that a person is entitled to divert by reason of a valid water right may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. The use of natural waterways to commingle and reclaim water shall be subject at all times to the supervision and control of the director of the department of water resources and shall be subject to the regulation of the watermaster within an established water

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district. The amounts of water turned into or diverted from all natural waterways are subject to the requirement of measurement and reporting.

The language recognizes the ability of a water user to commingle water with waters of a natural stream channel but does not describe a process for addressing issues of injury, evaporation, seepage, water measurement, reporting, and watermaster control. IDWR interprets the statute to mean that a wateruser may commingle and reclaim the water from a natural stream without filing an application for transfer with IDWR. As a result, **Caldwell Irrigation Lateral District/Pioneer Irrigation District may commingle Pioneer water with Wilson Drain and Indian Creek water and subsequently reclaim the Pioneer water from Indian Creek without adding a point of diversion to any existing water rights through the transfer process.** The Lateral District may be required to diminish its rediversions in the future for evaporation, seepage, or other losses, and may be required to measure and report diversions, particularly if a watermaster regulates the diversions from Indian Creek in the future.

Because the proposed points of diversion will not be authorized by a water right, the Lateral District will be required to obtain stream channel alteration permits for any construction or maintenance below the ordinary high water mark at the location of the discharge to Wilson Drain and the two locations of recapture from Indian Creek. If you have further questions, I'd be happy to discuss them with you.

Respectfully,



Gary Spackman

cc. Norm Young  
Phil Rassier  
Glen Saxton  
Ron Carlson  
Allan Merritt  
Shelley Keen  
Scott Campbell