

RECEIVED

JUL 15 2013

DEPARTMENT OF  
WATER RESOURCES

Jerry A. Kiser  
Attorney at Law  
1365 North Orchard Suite 216  
P.O. Box 8389  
Boise, Idaho 83707

jkiser@cableone.net

(208) 861-4657

July 12, 2013

Gary Spackman  
Director, Idaho department of Water Resources  
322 E. Front St.  
P.O. Box 83720  
Boise, ID 83720-0098

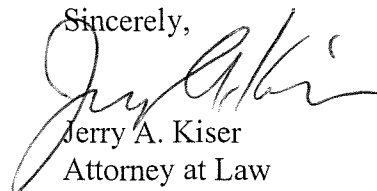
Re: Petition for Appointment of Lateral Manager for the Emmett Lateral (Head Gate No. 120)

Dear Director Spackman:

I write as attorney for Sam Rosti and Rosti Farms (hereinafter "Rosti") regarding the above referenced matter. This letter is to advise you that pursuant to the provisions of Idaho Code section 42-909 demand has been made upon the watermaster for water district 63 to appoint a lateral manager for the Emmett Lateral. A copy of the letter to the watermaster for District 63 is enclosed. If the watermaster fulfills his duty under Idaho Code section 42-909 and appoints a Lateral manager, the above referenced Petition will be withdrawn. Until a Lateral manager is appointed please consider the Petition active.

If you have any questions regarding this matter, please contact me.

Sincerely,



Jerry A. Kiser  
Attorney at Law

Enclosures

cc: Client

Jerry A. Kiser  
Attorney at Law  
1365 North Orchard Suite 216  
P.O. Box 8389

jkiser@cableone.net

Boise, Idaho 83707

(208) 861-4657

July 12, 2013

Sent by email to [waterdistrict63@qwestoffice.net](mailto:waterdistrict63@qwestoffice.net) and by first class U.S. mail

Rex Barrie  
PO Box 767  
Star, Idaho 83669

Re: Emmett Lateral/ request for Lateral manager

Dear Mr. Barrie:

I write as attorney for Sam Rosti and Rosti Farms (hereinafter "Rosti") regarding an issue which has arisen on the Emmett Lateral. The Emmett Lateral is a lateral ditch off the Farmers Union canal served by Farmers Union headgate number 120. The lateral is located just west of Pollard lane and runs from the Farmers Union canal near the northerly most part of N. Pollard lane south to the second to last split of the lateral between Beacon light road and Floating Feather road. At this location a headgate splits the lateral flow southeast and west. The west flow goes to Star Acres Water Users East (hereinafter "Star Acres") and the southeast flow goes to the land owned by the Meridian School District, which land is being leased and farmed by Rosti with some additional flow to Ron Schreiner from the final split of the lateral flow.

A dispute has arisen between Rosti and Star Acres in the regulation of flow at the east/west dividing headgate. As a result Rosti filed a petition with the Director of the Idaho Department of Water resources to have a Lateral manager appointed. I have enclosed a copy of the Rosti letter (Petition) to the Director and the Departments notice of the Petition. Subsequent to the filing of the Petition, we have become aware that under Title 42, Chapter 9 of the Idaho Code, as the watermaster for water district 63 you have the duty to appoint a lateral manager upon written demand by a party taking water from the Lateral.

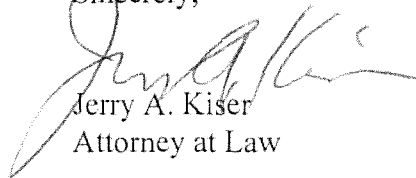
The Emmett lateral has not elected a lateral manager pursuant to the provisions of Idaho code sections 42-907 and 42-908. Pursuant to the provisions of Idaho Code section 42-909, if the Lateral fails to select a manager as provided in Idaho Code sections 42-907 and 42-908, "... the watermaster of the water district, shall upon written demand of one of the parties, appoint a manager for said lateral, who shall have and exercise all the powers and perform all of the duties of a manager of the distributing lateral as provided in section 42-910..." Please consider this letter written demand upon you by Rosti, a water user taking water from the Emmett Lateral to appoint a manager for the Emmett

Rex Barrie  
PO Box 767  
Star, Idaho 83669  
page 2

Lateral. Due to the shortage of water and weather conditions, appointment of a lateral manager needs to occur as soon as possible.

If you have any questions regarding this matter, please contact me.

Sincerely,



Jerry A. Kiser  
Attorney at Law

Enclosures

cc: Client  
Idaho Department of Water Resources



Via email

Ben Barbot  
President, Star Acres Water Users  
10,000 W Rolling Hills Dr  
Star, ID 83669

July 19, 2013

Gary Spackman  
Director, Idaho Department of Water Resources  
322 E Front St  
PO Box 83720  
Boise, ID 83720-0098

Dear Sir,

I believe that the lateral manager on the Emmett Lateral needs to be knowledgeable regarding the water splits and of the local areas which have experienced concerns and problems. The next crucial element for a lateral manager is a vested interest in the success of the lateral which will assure full commitment to maintenance and repair. The final requirement is strength, meaning the strength and ability to be a check and balance for Sam Rosti who is a strong willed board member of the ditch company. The Emmett Lateral manager must have this strength along with enough distance from Sam Rosti and the Farmers Union Ditch Company to be effective in maintaining the balance of power and resolving any issues that may arise.

The Star Acres Water Users Association has nominated me as their candidate for the position of lateral manager on the Emmett Lateral and I have accepted as I believe that I will be effective as such. I have an excellent understanding of how critical water and its proper delivery is to those who receive their irrigation via the lateral. I am very detailed oriented and have the ability to calculate that all users are receiving their proper water flow. I will ensure that all splits are properly maintained, that the removal and addition of water to the lateral will be handled through the necessary channels and that any changes that result are quickly made. I will be available to resolve and document any problems or disputes that may arise among lateral users.

Lastly, one thing that the Star Acres Water Users Association is adamantly against is the appointment of any lateral manager of whom Sam Rosti has direct or indirect control through but not limited to farming activities, his role as a board member of the Farmers Union Ditch Company, or familial connections.

Thank you.

Ben Barbot

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JUL 19 2013

DEPARTMENT OF  
WATER RESOURCES

July 19, 2013

Department of Water Resources  
322 East Front Street  
P.O. Box 83720  
Boise Id. 83720-0098

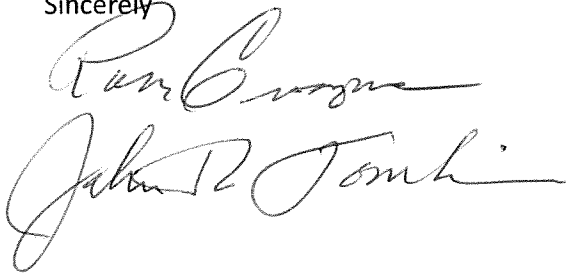
Attn: Rob Whitney  
Water Compliance Bureau

Dear Mr. Whitney

Attached please find the signed letter from the water users on the Emmett Lateral and also letters from the Meridian School District concerning this issue.

The Star Acres Water Users would like you to consider Ben Borbot as the Lateral Manager for the rest of this season.

Sincerely



Paul C. ...  
John R. Tomlin

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JUL 19 2013  
DEPARTMENT OF  
WATER RESOURCES

July 18, 2012

To whom it may concern

After much investigation and conversation, it is my opinion that in a tight water year the current arrangement is not working. There are distinctly two different opinions to this issue. Each side believes the other side is taking an incorrect amount of water and both sides accuse the other of changing the flow of water. Further, both sides state that they can provide proof of unapproved changes to water splits.

I absolutely agree with everyone's desire to appropriately set the splits and leave them alone. That is the desire of all parties. Apparently, the good news is that since the time Rex Barrie placed a note on the weir that the splits have not changed.

After talking with Rex Barrie it is apparent that the structure and organization of the Emmett Lateral users is inadequate for the pressures of a low water year. The suggestion given was for a strong volunteer to be chosen to monitor the flows and the splits and to work with all parties concerned. This would take a strong individual that could deal with all parties. I would advocate this solution over the assigning of a lateral manager that would ask to be compensated for their work. I completely understand the lack of will from the water users that would have to incur this additional cost.

Further, once this season is over there appears to be a need to update measuring devices to add clarity to the amount of water flow and the splits. This structural issue is part of the problem.

Finally, I would absolutely advocate the soliciting of the Ada County Sheriff's Department anytime malicious activity takes place. This issue is too important to all users not to invoke law enforcement if necessary.

Sincerely,



Bruce Gestrin

Deputy Superintendent

Joint School District No. 2

7/19/13

Gmail - Emmett lateral



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Ralph Crosgrove <ralph.crosgrove@gmail.com>

JUL 19 2013

DEPARTMENT OF  
WATER RESOURCES

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## Emmett lateral

1 message

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**Barb** <Barb@barbgestrin.com>  
To: Ralph.crosgrove@gmail.com

Thu, Jul 18, 2013 at 10:34 PM

Ralph,

I'm so sorry this is so late in getting to you tonight. This last hour is the only time I have had today to concentrate on a letter and I promised to get it to you today.

I hope all parties make it through this low water year without major incident and that in the future structure can be added to the water users to reduce friction.

I hope you have a great time up north so you can forget about all of this.

Bruce

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 **Emmett lateral.pdf**  
246K

Gary A. Madenford  
3605 N. Pollard Ln.  
Star, Idaho 83669

July 18, 2013

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JUL 19 2013

DEPARTMENT OF  
WATER RESOURCES

Mr. Rob Whitney  
Water Compliance Bureau  
Idaho Department of Water Resources  
322 E. Front Street  
P.O. Box 83720  
Boise, Idaho 83720-0098

RE: Notice of Petition for Appointment of Lateral Manager for the Emmett Lateral (Head Gate No. 120)

Mr. Whitney,

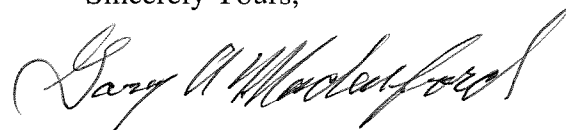
This letter is to request that you **NOT** hire or assign a new Emmett Lateral Manager on the Farmers Union Ditch Company.

Yesterday, one of the members of the Star Acres Water Users came by asking me to sign a petition regarding the request to appoint a lateral manager. It appears that the Star Acres Water Users have been managing the system quite well for the past 40 years and are well able and willing to continue to do so. This year they have encountered several gross abuses of the lateral system by Mr. Sam Rosti, who made the request for a Emmett Lateral Manager. They also said that Mr. Rosti wanted to put his own person in to manage the system. This would give him an unfair advantage over the water system.

I could only support the appointment of a lateral manager if (1) the manager was fair, unbiased, and had no affiliation with Mr. Rosti, and (2) it would come at no cost to me or the other water users.

Your consideration in this matter is greatly appreciated.

Sincerely Yours,



Gary A. Madenford

cc: Ben Barbot  
President, Star Acres Water Users  
10,000 W. Rolling Hills Dr.  
Star, Idaho 83669



RECEIVED

JUL 18 2013

DEPARTMENT OF  
WATER RESOURCES

Gary A. Madenford  
3605 N. Pollard Ln.  
Star, Idaho 83669

July 17, 2013

Mr. Rob Whitney  
Water Compliance Bureau  
Idaho Department of Water Resources  
322 E. Front Street  
P.O. Box 83720  
Boise, Idaho 83720-0098

RE: Notice of Petition for Appointment of Lateral Manager for the Emmett Lateral (Head Gate No. 120)

Mr. Whitney,

This letter is to request that you have the new Emmett Lateral Manager contact me at (208) 830-9911 and assist me in finding a way to help deliver the 10.5 shares of Farmers Union Ditch Company water that I pay for and am entitled to.

By way of background, Mr. Dennis Loosli was the prior owner until September 2009, the property then went to the bank for two years, then I bought it in August 2011. When I bought the property, it had significant damage from vandalism and fire. I have been doing extensive repairs ever since. This year I attempted to get the irrigation water to flow into the pond. At the steel head gate, I found that someone had driven a wooden stake in front of the diversion that goes to my property, then packed it with dirt and mud all the way into the pipe that takes the water to the pond. Who or why someone did that is beyond my comprehension. The bank, then I, paid for the use of the water, why did someone go to such great effort to see that it was denied it to us. My son and I removed the stake, dug out the dirt and mud as best we could, then tried to blow out the pipe. We were able to get a trickle of water to flow into the pipe and to the pond, but after 3 weeks of flow, there is still only a tiny wet spot in the pond. I estimate that we are getting less than 0.00001% of the water that we are entitled to. I need help in figuring out how to actually get my duty of water in a usable fashion without interfering with the rights of any of the other water users.

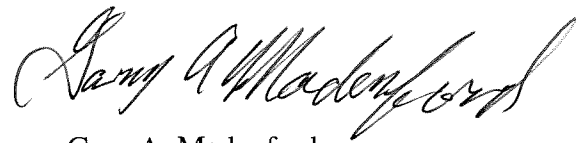
This spring so far, we have lost about 50 to 60 trees that have died because of lack of water, and the lawn and pasture is long since dead. There is a small place where I have turned on a trickle of water from another spot on the ditch to try to save a few trees. It waters an area about a 20 feet square, not much of the 10 acres, or 0.0009 percent, but it's a start. I've found that someone has been coming on my property (trespassing) during the day and turning that off. Are some of the other water users on the ditch so paranoid, that I should not be allowed to save a few trees with the tiny portion of the water that I can actually get, that they have to make it a point to trespass on my property and shut off my water off each day? What would happen if I were

actually able to get my full duty of water? Would they shut that off too? Heaven forbid that I should use such a tiny portion of my water right to try to save a few trees where I can. What's wrong with these people?

I am not asking for any more water than I am entitled to, but I do want to figure out a way to actually get my fair share without interruption.

Your help in this matter would be greatly appreciated.

Sincerely Yours,

A handwritten signature in cursive script that reads "Gary A. Madenford". The signature is written in black ink and is positioned above the printed name.

Gary A. Madenford

cc: Ben Barbot  
President, Star Acres Water Users  
10,000 W. Rolling Hills Dr.  
Star, Idaho 83669

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JUL 19 2013

DEPARTMENT OF  
WATER RESOURCES

July 15, 2013

Department of Water Resources  
322 East Front Street  
P.O. Box 83720  
Boise Id. 83720-0098

Attn: Rob Whitney  
Water Compliance Bureau

Dear Mr. Whitney

Why would you entertain a request for a Lateral Manager from Sam Rosti who does not own any water in the Emmett Lateral?

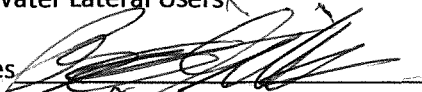
This letter is in answer your letter Dated July 9, 2013 to the users of the Emmett Lateral concerning the appointment of a Lateral Manager. We do not want or need a Lateral Manager. We have gotten along just fine for 40 plus years until Mr. Sam Rosti got involved with our water. Mr Rosti does not own any water in the Emmett Lateral.

We want the division boxes divided equally dependant upon the number of shares owned by the different property owners and that no one changes the division split. No boards going in and out or any changes made to the division boxes.

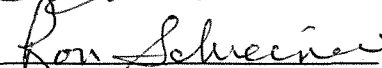
This will eliminate any problems that have occurred and we all agree to abide by the proper division splits based on ownership of Farmers Union Ditch Shares:

Sincerely Emmett Water Lateral Users

Bert Gillis 1.4 Shares

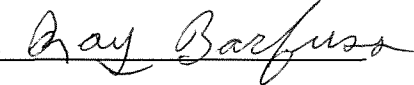


Ron Schreiner 1.5 Shares



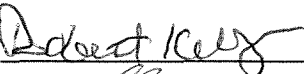
Meridian School District 5.41 Shares includes Middleton Mill \_\_\_\_\_

Ray Barfuss 4.0 Shares

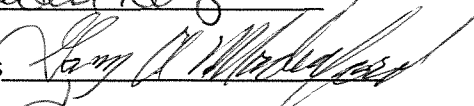


Michael Horton 1.93 Shares \_\_\_\_\_

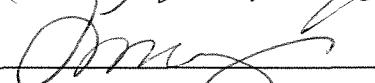
Robert Kelley .81 Shares



Gary Madenford .81 Shares



Loren Macey 1.07 Shares



Star Acres Subdivision 9.26 Shares includes Middleton Mill

 7-15-13

STATE OF IDAHO  
**WATER DISTRICT No. 63**  
(BOISE RIVER)

REX R. BARRIE, WATERMASTER  
P.O. BOX 767  
STAR, IDAHO 83669-0767  
(208) 908-5480

July 16, 2013

Mr. Jerry Kiser  
1365 N. Orchard, Suite 216  
Boise, Idaho 83607

Re: Emmett Lateral Manager

Dear Mr. Kiser:

I received your letter dated July 12, 2013 requesting I appoint a Lateral Manager for the Emmett Lateral.

My recommendation for this issue would be to have Farmers Union Ditch Company assume the responsibilities for delivery to the water users on the Emmett Lateral.

Last week I sent a letter to Mr. Rob Whitney, IDWR suggesting that Mr. Dane Vaughn be appointed for this position. My intent was for Mr. Vaughn to act in his capacity as watermaster for Farmers Union to administer the deliveries on the Emmett Lateral.

In conclusion, the most logical approach for the remainder of this irrigation season is administration of the Emmett Lateral by Farmers Union Ditch Company.

Please contact me if you have any questions regarding this matter.

Sincerely,

Rex R. Barrie  
Boise River Watermaster

Cc: Mr Gary Spackman, Director, IDWR  
Mr. Rob Whitney, IDWR

Sent via e-mail:

STATE OF IDAHO  
**WATER DISTRICT No. 63**  
(BOISE RIVER)

REX R. BARRIE, WATERMASTER  
P.O. BOX 767  
STAR, IDAHO 83669-0767  
(208) 908-5480

July 12, 2013

Mr. Rob Whitney  
Water Compliance Bureau  
Idaho Department of Water Resources  
322 East Front Street/ P.O. Box 83702  
Boise, Idaho, 83720-0098

**Re: Lateral Manager for Emmett Lateral (Farmer's Union Canal)**

Dear Mr. Whitney:

After review of your letter dated July 9, 2013 I have concluded that the best course of action for the appointment of a lateral manager would be for the Farmer's Union Canal Watermaster, Dane Vaughn to be appointed as the lateral manager.

Mr. Vaughn has all the information related to the Emmett Lateral as to acres, shares and percentages that would affect delivery to the water users on the lateral. He currently controls the amount delivered from the main canal and as such it would seem the best approach for the remainder of the 2013 season that he be charged with regulating the individual delivers.

If the Emmett Lateral Water Users can organize before the start of the 2014 irrigation season they may choose to appoint someone else for next season.

In my opinion, this would provide a much needed fix for the current problem and would allow proper administration to the turnouts located along the lateral for the remainder of the 2013 season.

Please contact me if you have any questions regarding this matter.

Sincerely,

Rex R. Barrie  
Boise River Watermaster

Cc: Mr. Gary Spackman, Director, IDWR  
Mr. Dane Vaughn, Watermaster, Farmers Union Canal Co.

**Sent Via e-mail**

## Whitney, Rob

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**From:** LLOYD KIFF [lkiff2@msn.com]  
**Sent:** Wednesday, July 10, 2013 4:31 PM  
**To:** Whitney, Rob  
**Subject:** Water surplus?

Dear Mr. Whitney --

I am writing to you in hopes that you might answer a simple question:

Is there really a water shortage this year?

My wife and I live on a 5+-acre property in the Star Acres subdivision, which is a collection of about 30 similar properties north of the village of Star between Floating Feather and Beacon Light. We irrigate our property with our own agricultural well, which is covered by one of the oldest permits in Ada County.

A 40-50-ft wide gully runs the length of our property in a roughly northeast-southwest direction. During our 13-year tenure on this property, we have never seen any natural water drainage in this gully at all, and this is obviously due to the fact that Beacon Light cuts across the gully just north of us, effectively blocking any drainage from the nearby foothills. However, during the past two summers, our gully has been frequently flooded by irrigation water from some unknown (to us) source to the north. This involves a surprisingly large volume of water, sometimes to a depth of two or more feet, and it often takes several days for one of these periodic floods to subside.

I would not bring this to your attention, but the unpredictability of the flooding is beginning to have a negative effect on our chances of selling our property, which we recently placed on the market. I have felt obliged to inform prospective buyers of the situation, i.e., that the most nicely landscaped portion of our property is frequently unusable for any purpose but wading. It is my impression that this has discouraged at least one probable buyer from making a bid on our place, and we were forced to tell a realtor that the place would not be suitable for one of her clients, who wanted to acquire a nicely landscaped place to stage weddings. If we are unable to sell our place and stay here, the flooding situation will continue to render a large part of our property unusable to us for most purposes for unpredictable periods.

Now, back to my question: If this is indeed a so-called "dry year," why is water being pumped from the overbooked Boise River and dumped on our property against our wishes? Regardless of our personal situation, I do not see how this can be justified from a water management standpoint, and I feel sure that there are farmers downstream from us who would love to have the water that is being drained -- and wasted -- on our place.

Thanks for any light that you can shed on this matter. I know you surely have many weightier items in your docket this year, but I will appreciate a reply at your convenience.

Regards,

Lloyd

Lloyd Kiff

9999 W. Star Acres Dr.  
Star, ID 83669





## Whitney, Rob

---

**From:** Whitney, Rob  
**Sent:** Monday, July 15, 2013 4:10 PM  
**To:** 'Ben Barbot'  
**Subject:** Response to Questions RE: Emmett Lateral

Ben,

Thanks for your letter and providing information relative to the Emmett Lateral. Your letter poses three questions concerning the appointment of a Lateral Manager.

- 1) Can the users still self-select (elect) a lateral manager after April 1?

The users from the lateral cannot elect a Lateral Manager for the current season at this point. However, a Lateral Manager can be elected for the next delivery season at an annual meeting to be held between January 1 and the last Monday in March. A Lateral Manager can be appointed by the manager of the distributing lateral for a water company upon the written demand of one or more users (Chapter 9, Title 42). Otherwise, a Lateral Manager may be appointed by the Director of IDWR in response to a petition from one or more users (Chapter 13, Title 42).

- 2) What is the standard ditch manager compensation rate?

There is no "standard rate" for compensation. However, in recent cases where the Director of IDWR has appointed a lateral manager, the hourly rate has been set at \$20-\$25 and mileage reimbursement at 55 cents per mile.

- 3) Will the appointment of a Lateral Manager lead to a resolution of the issues that prompted the petition for appointment?

To the extent that a Lateral Manager is provided with a good delivery list and the lateral ditch has diversion structures that are both measurable and adjustable, deliveries should be consistent. Disputes related to how much water a user is entitled to must be resolved with the entity providing the water.

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**From:** Ben Barbot [<mailto:benbarbot@gmail.com>]  
**Sent:** Friday, July 12, 2013 1:17 PM  
**To:** Whitney, Rob  
**Subject:** Fwd: Letter to ID Dept of Water Resources RE: Issue with Water Splits

----- Forwarded message -----

**From:** "Ben Barbot" <[benbarbot@gmail.com](mailto:benbarbot@gmail.com)>  
**Date:** Jul 10, 2013 1:46 PM  
**Subject:** Letter to ID Dept of Water Resources RE: Issue with Water Splits  
**To:** <[Malespin@msn.com](mailto:Malespin@msn.com)>, <[ron-normaschreiner@centurylink.net](mailto:ron-normaschreiner@centurylink.net)>, <[gillisfarms@yahoo.com](mailto:gillisfarms@yahoo.com)>, <[hatch.lohrea@meridianschools.org](mailto:hatch.lohrea@meridianschools.org)>, <[piwo4me@hotmail.com](mailto:piwo4me@hotmail.com)>, <[skrosti@speedyquick.net](mailto:skrosti@speedyquick.net)>  
**Cc:**

Good afternoon,

I want everyone to be aware of an ongoing situation that has resulted in fluctuating irrigation water flows and other concerns for many residents of Star Acres. We are working towards correcting it but it has escalated to the Director of the ID Dept of Water Resources for resolution and the attached letter will be sent to him. Please feel free to call or email me with questions or concerns. Thank you.

--

Ben Barbot

(208) 870-8157

benbarbot@gmail.com

Ben Barbot  
President, Star Acres Water Users  
10,000 W Rolling Hills Dr  
Star, ID 83669

July 9, 2013

Gary Spackman  
Director, Idaho Department of Water Resources  
322 E Front St  
PO Box 83720  
Boise, ID 83720-0098

Dear Sir,

This letter is in response to a written request by Sam Rosti to have a ditch manager appointed for the Emmett lateral.

Idaho statutes clearly state that where two or more parties take water from a shared canal or ditch a lateral manager shall be selected by the users on or before April first. Further more if one is not selected by the users, a manager can be appointed by your office and the compensation for the appointed manager can be assessed to the lateral users.

This prompts several questions, the first of which is whether or not the lateral users can still self-select a ditch manager after April first. What is the standard ditch manager compensation rate that would be charged to a lateral user? Will the appointment of a lateral manager lead to a resolution of the issues that prompted Sam Rosti to request one?

The issues that prompted Sam Rosti's request began when water users along the lateral began noticing large variances in the flow they were receiving. This was investigated and it was found that Sam Rosti or someone operating on his behalf had removed a piece of steel from a dividing box that feeds the eastern side of Star Acres. This change was made without discussing the removal with other lateral users and had the effect of significantly changing the proper division of water which has been felt most heavily by users below Sam Rosti's operations. At this time, the steel has been replaced and is working though the box will be completely repaired in the off season.

Unfortunately this did not solve all of the water flow discrepancies so further investigation was conducted. It was found that boards were being added and removed to alter the flows at the white dividing box which feeds the west side of Star Acres. Again, significantly altering flows from the proper division of water along the lateral. To rectify the situation at the white box, I ran the calculation for the proper split according to data the Star Acres Water Users Association had and then had them verified by Ralph Cosgrove. John Tomkinson and I built the necessary weir board

to correct the splits and called Sam Rosti who was present at time of installation after which we took measurements of water flow. I calculated the flow rates upon my return home and verified that the flows were both just under full flow rate and that the split was operating properly. Later that evening, Sam Rosti informed me that he believed the water split information we used was incorrect and brought me his calculations and documentation which he had at his disposal as a board member of the Farmers Union Ditch Co. After reviewing Sam Rosti's information I was confident that the head gate report matched my calculations and was able to see that the documentation provided to certify the discrepancies had clearly been altered from the original typed configuration. I proceeded to try to get copies of the originals from Farmers Union Ditch Co. but have met much resistance and to date have not received any clean copies. Within a couple days of placement of the new weir boards, a significant drop in flow was once more noted. Inspection of the white box showed the new weir boards had been removed and a new metal gate and measuring device had been installed, though again other users had not been notified of such. I tried to contact Sam Rosti by phone and left a message. I then removed the metal gate and returned the split to the proper size. On the walk back from the box, I spoke with Sam Rosti and informed him that he could pick up his property from my yard and that he could not make changes to the lateral's flow rates without first communicating with other users. I proceeded to call the Idaho Department of Water Resources and had Corbin in their office verify my calculations and the formula I was using to determine flows, both of which checked out to be completely accurate. Later that day, I received a phone call from Sam Rosti informing me that law enforcement had been called as I was stealing water and he threatened anyone who even came up to the box with further enforcement actions.

I then proceeded to measure each and every division of water on the Emmett lateral and all were correct. Upon consulting with Ron Schreiner regarding the situation, new information came to my attention which has improved my understanding of the dilemma on the Emmett lateral. On May 21<sup>st</sup>, 2012 the Joint School District No. 2 purchased 3 water shares of Farmers Union Ditch Co. on certificate #2967. Later that year Sam Rosti discussed with Ron Schreiner what changes would need to be done in order to deliver the additional water to the property owned by Joint School District No. 2 which he was farming. Ron Schreiner informed Sam Rosti that when Mr. Gillis had previously transferred new water into the Emmett lateral he had to update all of the affected splits and get the changes approved by all the lateral users. Ron Schreiner advised Sam Rosti to do the same and further offered to assist in calculating what changes were necessary. To date Star Acres Water Users have not been notified by Sam Rosti or Joint School District No. 2 that the shares have been transferred. However, Sam Rosti did inform the Farmers' Union Ditch rider to add an additional 43", the amount from the 3 shares, into the lateral at head gate 120.

The current configuration of splits does not allow for the proper delivery of the extra shares and changes will need to be made to the system in order to deliver the correct flow to Sam Rosti. This stems from the fact that of the 43 inches allotted by the shares only 13.23 make it to the

white box, meaning that users above him are receiving excess water. When Sam Rosti attempts to make changes to the gates feeding Star Acres in order to receive the additional 43 inches, he is depriving our users of their rightful amount. I do see two possible solutions to this situation which are outlined below.

Solution No. 1: If Joint School District No. 2 would like to have the water transferred they would need to request it and changes would need to be made in the Emmett lateral. As the boxes were designed to divide water based on the shares entering, any transfer of shares in or out of the Emmett lateral, even within the lateral, requires change to be made to each box. Joint School District No. 2 must also understand that once added, the removal of the share from the Emmett lateral will also involve the changing of splits. All of these changes except for one could be made with water still in the ditch. The final change is small enough that it can wait to be completed until water is no longer in the lateral. These changes would assure proper water share distribution with minimal intervention or labor required for the maintenance of the lateral and water flows.

<b>Main Split</b>	inches	percent	measured	percent	variance
George Gillis	15.40	4.65%	3	4.62%	-0.03%
Dennis Loosli	8.91	2.69%	1.75	2.70%	0.01%
Robert Kelly	8.91	2.69%	1.75	2.70%	0.01%
Cont. Flow	297.85	89.97%	58.375	89.98%	0.01%
Total	331.07		64.88		

<b>East/West Split</b>	inches	percent	measured	percent	variance
West End	72.16	24.23%	11.25	24.26%	0.03%
East End	225.70	75.77%	35.13	75.74%	-0.03%
Total	297.85		46.38		

<b>East Split #1</b>	inches	percent	measured	percent	variance
Barfus	44.00	19.50%	8.125	19.52%	0.02%
Cont. Flow	181.70	80.50%	33.5	80.48%	-0.02%
Total	225.70		41.625		

<b>East Split #2</b>	inches	percent	measured	percent	variance
Baker/Macy	11.77	6.48%	3.625	6.52%	0.04%
Cont. Flow	169.93	93.52%	52	93.48%	-0.04%
Total	181.70		55.625		

Solution No. 2: If Joint School District No. 2 does not want to transfer the share, the final split/diversion at the white box should be returned to its previous split. This is the easiest option.

<b>East Split #3</b>	inches	percent	measured	percent	variance
Star Acres East	50.93	40.12%	14.5	40.14%	0.02%
Star School Prop	59.50	59.88%	21.625	59.86%	-0.02%
Ronald Schreiner	16.50				
Total	126.93		36.125		

Once an option is selected and the necessary changes completed, the shares must stay with the property selected. Moving the shares between properties during the season is very difficult and leads to problems and disputes which should be avoided.

Thank you for your time and consideration in this matter.

Ben Barbot  
 Star Acres Water User President  
 benbarbot@gmail.com  
 (208) 870-8157

<b>Gate 120</b>	FUD Shares	Adj Shares	inches	add. inches	
George Gillis	2.00	1.40	15.40		15.40 Main split 1
Dennis Loosli	1.16	0.81	8.91		8.91 Main split 1
Robert Kelly	1.16	0.81	8.91		8.91 Main split 1
Anthony Horton	1.93	1.93	21.23		21.23 West end
Star Acres	8.35	8.35	91.85	10.00	101.85 West/East
Ray Barfuss	4.00	4.00	44.00		44.00 East 1
William Dennis	0.57	0.57	6.27		6.27 East 2
John Moon	0.50	0.50	5.50		5.50 East 2
Ronald Schreiner	1.50	1.50	16.50		16.50 White box
HillView Development	4.00	4.00	44.00		44.00 White box
Mac Land Co	0.50	0.50	5.50	10.00	15.50 White box
					<b>288.07</b>

<b>Main Split</b>	inches	percent	measured	percent	variance
George Gillis	15.40	5.35%	3.5	5.31%	-0.03%
Dennis Loosli	8.91	3.09%	2	3.04%	-0.06%
Robert Kelly	8.91	3.09%	2	3.04%	-0.06%
Cont. Flow	254.85	88.47%	58.375	88.61%	0.15%
Total	288.07		65.88		

<b>East/West Split</b>	inches	percent	measured	percent	variance
West End	72.16	28.31%	13.75	28.13%	-0.18%
East End	182.70	71.69%	35.13	71.87%	0.18%
Total	254.85		48.88		

<b>West End Split</b>	inches	percent	measured	percent	variance
Star Acres West	50.93	70.58%	15.5	70.45%	-0.12%
Horton	21.23	29.42%	6.5	29.55%	0.12%
Total	72.16		22		

<b>East Split #1</b>	inches	percent	measured	percent	variance
Barfus	44.00	24.08%	8.125	24.62%	0.54%
Cont. Flow	138.70	75.92%	24.875	75.38%	-0.54%
Total	182.70		33		

<b>East Split #2</b>	inches	percent	measured	percent	variance
Baker/Macy	11.77	8.49%	4.8125	8.47%	-0.02%
Cont. Flow	126.93	91.51%	52	91.53%	0.02%
Total	138.70		56.8125		

<b>East Split #3</b>	inches	percent	measured	percent	variance
Star Acres East	50.93	40.12%	14.5	28.43%	-11.69%
Hillview Dev	44.00	59.88%	36.5	71.57%	11.69%
Mac land	15.50				
Ronald Schreiner	16.50				
Total	126.93		51		

<b>Proposed East Split #3</b>	inches	percent	measured	percent	variance
Star Acres East	50.93	40.12%	14.5	40.14%	0.02%
Hillview Dev	44.00	59.88%	21.625	59.86%	-0.02%
Mac land	15.50				
Ronald Schreiner	16.50				
<b>Total</b>	<b>126.93</b>		<b>36.125</b>		

	cfs @ 100%	70%	measured	
Star Acres West	1.01850	0.71295	1.08222	40.00%
Comb school/schreiner	1.52000	1.06400	1.62332	60.00%
<b>Total</b>	<b>2.53850</b>	<b>1.77695</b>	<b>2.70554</b>	
miners inches .02 cfs per inch				

43 water added without approval by or knowledge of lateral users.

addition inches	@ Split	remaining	
		43	
at main split	88.61%	38.10	88.61%
at east/west spl	71.87%	27.39	63.69%
at east split 1	75.38%	20.64	48.01%
at east split 2	91.53%	18.89	43.94%



## Whitney, Rob

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**From:** Whitney, Rob  
**Sent:** Tuesday, July 02, 2013 6:07 PM  
**To:** Luke, Tim; Spackman, Gary  
**Cc:** Whitney, Rob; Knowles, Corbin  
**Subject:** Rosti Petition for Lateral Manager

Gary and Tim,

As you know, Sam Rosti submitted a petition for the Director to appoint a lateral manager to control delivery off of the "Emmett Lateral". The Emmett Lateral is served by a head gate No. 120 (HG 120) from the Farmers Union ditch. I met with Sam Rosti the evening of July 1, 2013 to discuss related issues. Additionally, I met with Ben Barbot and John Tompkinson on the morning of July 2, 2013. Sam Rosti had also been on site with Rex Barrie on June 30, 2013.

Some of the controversy is centered around a "splitter box" (D-box) that is at the end of the Emmett Lateral. This D-box is intended to convey water to land owned by the Meridian School District (Farmed by Rosti), Ron Schreiner and residents of Star Acres Subdivision. According to Rosti the original split at the D-box was 60% to Meridian and Schreiner ground and 40% to the subdivision. If I understand correctly, according to Rosti 43 inches of water has been added to the Emmett Lateral and this changes the split to 70/30. The D-box was intended to function as a contracted weir capable of Measuring water in both directions. This D-Box is not currently capable of accurately measuring water but could be fairly easily modified to do so. Photos of the D-box, HG 120 and weir below HG 120 are located @ <P:\RWhitney\Emmett Lateral D-Box>.

Barbot agrees with the 60/40 split but not the 70/30 and argues that the 43 inches referenced by Rosti was never in the Emmett Lateral and should not be. Many of the issues raised by Barbot relate to the potential "conflict of interest" with Rosti being on the board of Farmers Union Ditch. Rosti stated that Farmers Union Ditch has limited deliveries to 70% of "full delivery" this season. As I understand, full delivery at HG 120 should be 318 inches (this number is painted on the head gate) without the added 43 inches. Corbin measured 325 inches at the 5ft weir below HG 120 (7/2). At 70% delivery (including 70% of the 43 inches) the flow at HG 120 should be 253 inches.

According to information from both Rosti and Barbot, the Star Acres Subdivision is entitled to 4.36 shares (11"/share at the D-box) plus 5" of Middleton Mill water. If this is correct, the subdivision should be delivered 53 inches at full delivery and 37 inches at 70%. Rex Barrie measured approximately 35 inches going to the subdivision on June 30 and I measured approximately 40.5 inches to Star Acres and 99 inches to Rosti & Schreiner on July 2 at the D-box.

Hope this information is helpful. I'll be back on Monday. If you have questions I'll have my cell (859-2003).

Thanks, RW

HG120 331 inches per telcom w/ J Kiser

7-9-13

## Whitney, Rob

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**From:** Luke, Tim  
**Sent:** Monday, July 01, 2013 9:10 AM  
**To:** Whitney, Rob  
**Subject:** FW: Request for a lateral manager on Farmers Union Canal, headgate #120  
**Attachments:** DOC

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**From:** Gibson, Deborah  
**Sent:** Monday, July 01, 2013 7:56 AM  
**To:** Luke, Tim  
**Cc:** Spackman, Gary  
**Subject:** Request for a lateral manager on Farmers Union Canal, headgate #120

Tim,

The attached documents were on my desk this morning when I came in. I'm forwarding the document to you both by email and paper version. Please follow up on this request for appointment of a lateral manager from Sam Rosti Farms. Sam is anxious to resolve this problem with delivery of irrigation water.

Gary is in Eastern Idaho today and tomorrow in meetings. He will return to the office on Wednesday and can be contacted by email or phone, if you have any questions.

Thanks!  
Debbie

## Chapter 13, Title 42 Idaho Code Lateral Ditch Water Users' Association

- **Provides remedy for water distribution from a specific canal or lateral ditch in cases where there is not a larger or active water distribution entity exercising control.**

- 42-1301 - If 3 or more users get their water at the same point on a canal or ditch, there shall be constituted a **Lateral Water Users Association** describes how the voting is conducted each March & the requirement to elect officers and a lateral manager.
- 42-1302 - Provides that if water users fail to elect lateral manager in March, then Board of Directors may elect lateral manager and set his compensation
- 42-1303 - Provides for inspection of the ditch by the assoc. directors & the Lat. Mgr. to derive an estimate for maintenance and repairs for assessments to the users
- 42-1304 - Provides date for Users to be notified of assessments & late payment date
- 42-1305 - Provides that lateral manager should not deliver water to delinquent users unless Approval obtained from association's board of directors.
- 42-1306 - Provides that lateral manager collects all assessments & sec'y/treas. pays the bills
- 42-1307 - Provides that the Association may sue for assessments & collect costs for Atty fees
- 42-1308 - \*\*\* Provides that if users or the Assoc. Board is unable to select Lat. Mgr., a user may petition IDWR and the Director has discretion to appoint the lateral manager and set his compensation. Appointment limited to tenure in the appointment but never more than the season.  
\*\* Director shall notify other affected water entities & other users on the lateral.  
\*\* Based upon the Petition, Responses & IDWR investigation, Director may appoint Or choose not to appoint a lateral manager.
- 42-1309 - Provides that Lateral Users Associations can borrow money & pledge assets
- 42-1310 - Describes remedy for an individual to get work done on a lateral when an Assoc. has not been formed

## Chapter 9, Title 42 Idaho Code

### Distribution of Water to Consumers

- Provides rules for water delivery to consumers inside water company systems including water delivery from Canals, Ditches & Laterals
- Watermaster is not a Chapter 6 watermaster but instead a Ditchrider

42-901 - Owners appoint Watermaster or Superintendent

If Owners can't agree, they may petition for the district court to appoint  
Water is distributed according to each user's pro rata share

42-902 - prohibits users from interfering with water delivery without consent of  
the watermaster

42-903 – Requires water delivery organization to provide headgates & measuring devices

42-904 – Allows for the lands served to be divided into classes if multiple water rights

42-905 - Describes the Point of Delivery

42-906- Provides that the assessment for the water shall be a lien on the land

42-907 - Provides owners on distributing laterals shall select a lateral manager for the season  
Duty to measure and properly apportion the water and deliver the water to users

\*\*\* Disputes as to 1) as quantity to be delivered or 2) the amount actually delivered  
Shall be referred to IDWR ( IDWR role limited to double checking water measuring)  
Provides parties must keep ditches in good condition

42-908 - Alternative method of selecting Lat. Mgr. Petition signed majority of users

42-909 - 3<sup>rd</sup> Alternative for selecting Lat Mgr. – Appointment by Watermaster or  
Appointment Board of Directors if inside an irrigation district

42-910 - Sets out duties for the appointed lateral managers, describes how costs are to be  
Apportioned and remedies in the event of nonpayment

42-911- 42-916 – additional duties of irrigation companies, miscellaneous issues etc