



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Governor

GARY SPACKMAN
Director

November 10, 2014

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PO Box 517
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Bruce M. Smith
Moore Smith Buxton & Turcke, Chtd.
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RE: Distribution of Water and Potential Unauthorized Use(s) within Water District 61E (Cold Springs Creek)

Dear Gentleman:

This letter is prepared in response to the complaint dated August 12, 2014, conveyed to the Idaho Department of Water Resources ("Department") on behalf of Double Anchor Ranches, Inc. ("DAR"). The Department has also received 1) a response to the complaint from Bruce M. Smith dated September 9, 2014, on behalf of Casa Del Norte ("CDN"); 2) a rebuttal by Mr. Honsinger dated October 2, 2014; and 3) a letter from Lynn Riggs on behalf of DAR dated October 15, 2014.

PRELUDE

On June 27, 2014, the Department received a request from Water District 61E ("WD61E") asking the Department to assist Watermaster Rich Neal ("Watermaster") with 1) obtaining additional training relative to water measurement and delivery; and 2) conducting a field evaluation of the existing diversion control structures and associated measuring devices on Cold Springs Creek. In response to the request from WD61E, Department staff met with the Watermaster on July 11, 2014, and August 6, 2014, to evaluate diversions and measuring devices on Cold Springs Creek. Enclosed please find copies of what the Watermaster reportedly conveyed to the water users of Cold Springs Creek on August 6, 2014. The documents include the 2002 Measurement Order issued by the Department, the Watermaster's Report on Weir Inspections dated August 6, 2014, and the Watermaster's Journal for 2014, describing his district activities through July 15, 2014.

The Department has reviewed and generally concurs with the Watermaster's "Report on Weir Inspections" and trusts that the users on Cold Springs Creek will initiate and complete any necessary repairs in cooperation with the Department and the Watermaster prior to the 2015 delivery season. The Department intends to supervise or support WD61E and the Watermaster as necessary to ensure appropriate administration and delivery of water from Cold Springs Creek.

The Department agrees that any confirmed unauthorized use, diversion or storage of water by any user must be curtailed and may also be subject to a formal enforcement action by the Department. The water right holders within WD61E must maintain and/or install lockable diversion and control structures as required by the Order of the Department dated January 18, 2002. Pursuant to the order, the Watermaster may shut off or refuse to deliver water from Cold Springs Creek if a user fails to install and maintain the required control structure(s) or measuring device(s). Additionally, failure to comply with the order may subject the user to a formal enforcement action.

RESPONSE TO COMPLAINT

The Department provides the following response to the concerns outlined in DAR's August 12, 2014, letter generally in the order they were presented.

Diversion and use of water without a valid water right

1. Sections 8 and 17, T4S R9E ("Ryegrass Pivot") - The complaint does not discuss water rights 61-2111, 61-11885 but they are included on Exhibit B of the complaint. Right 61-301B is a ground water right authorizing irrigation of about 130 acres within the Ryegrass Pivot from the Walker well. Rights 61-2111 and 61-11885 authorize irrigation of the same approximate 130 acres within the Ryegrass Pivot area from the upper CDN diversion on Cold Springs Creek. Department records indicate that these rights have historically been diverted from the upper CDN diversion into the four-mile ditch. CDN has secured a rental from the Water Supply Bank (WSB) authorizing irrigation of 160 acres, from ground water, under the Ryegrass Pivot beginning in 2014 through 2016. After reviewing Landsat imagery from June 30, 2013, and September 5, 2014, the Department quantifies the actual irrigated acreage under the Ryegrass Pivot to be approximately 192 acres in 2013 and 2014 (Exhibit 1 & 2). If CDN did not use water (2013 & 2014) from the Walker well under water right 61-301B and/or water from Cold Springs Creek under water rights 61-2111 or 61-11885, the entire pivot area was irrigated without a valid water right in 2013 and 32 acres of the irrigation was not covered by a valid water right in 2014. Unless CDN provides information to the contrary, the Department will consider a Notice of Violation ("NOV") for the unauthorized use in 2014.
2. Section 21, NW ¼, T4S R9E (134 acre pivot) - This pivot was covered by a WSB rental in 2013. The Watermaster has reported that the land under the pivot was not irrigated in 2014. The Department has confirmed with aerial imagery that irrigation did not occur in 2014.
3. Section 9, NE ¼ SW ¼, T4S R9E (BLM owned parcel) - The Department quantifies the irrigation within this parcel at approximately 13.5 acres. The Bureau of Land Management owns ground water rights 61-2199B, 61-11887B and 61-2209B that authorize irrigation of 16 acres.
4. Section 16, S ½ NW ¼, T4S R9E (40-50 acre partial circle pivot) - Department review of aerial photography indicates that the land under this pivot was not irrigated in 2013 or 2014.

Out of season or unauthorized diversions

The alleged "out of season" diversions would constitute unauthorized diversion, or use of water without a valid water right. The Watermaster has also expressed concern to Department staff about apparent diversions outside the irrigation season (other than stockwater) that may not be covered by a water right. The Department will require that the Watermaster curtail any diversion or use of water from Cold Springs Creek that is not authorized by a valid water right. This will require administration of water rights on a year-round basis and not simply during the irrigation season. WD61E is encouraged to provide a budget for additional administration by the Watermaster throughout the year. Water that is not being delivered by the Watermaster in priority and under authorization of a valid water right must stay in Cold Springs Creek.

Diversions without beneficial use (eg. Stockwater with no livestock observed)

Water right 61-11906 allows a maximum diversion of 1.54 cfs for year-round stockwater use from one or any combination of five points of diversion off Cold Springs Creek. Of the total 1.54 cfs diversion rate, 1.3 cfs is dedicated specifically to conveyance loss in the delivery system. To the extent that water is diverted under a valid water right and it becomes evident that the water is being wasted or not being applied to the beneficial use authorized by the water right, the Watermaster should be notified. The Department may direct the Watermaster to curtail or limit the diversion if the user has been contacted and it is confirmed that water is being wasted or used in a manner inconsistent with the authorized use. Use of water not in conformance with a water right is a violation of Idaho Code §42-351 and may be subject to a formal enforcement action.

Unauthorized storage or diversion to storage

The complaint did not quantify the volume of the reservoir to the north of the Ryegrass Pivot. Using GIS, it appears that the reservoir has a surface area of approximately 3.5 acres. However, the average depth of the reservoir is unknown. Department records indicate the reservoir was historically used as a cooling pond for water diverted from the 2+ well and/or the Walker well. The reservoir may have previously been viewed by the Department as "incidental" because the rate of flow from the original ground water rights could fill the reservoir in less than 24 hours. Storage in the reservoir should not occur during the non-irrigation season unless a storage right is secured. If the existing and appurtenant irrigation water right flow rates are not sufficient to fill the reservoir in 24 hours or less, the addition of a storage component to the water right(s) may be required or the active reservoir capacity reduced. The Department will further investigate this issue with CDN.

Inadequate monitoring of commingled sources (ground water and surface water)

WD61E and the Watermaster are responsible for the administration and delivery of valid water rights from Cold Springs Creek under the supervision of the Department. At present, ground water rights are not regulated under a water district and are not subject to the Order requiring measurement. The Department anticipates that ground water rights in Administrative Basin 61 will be placed in one or more water districts and be subject to measurement and administration by a watermaster. In the interim, the Department intends to issue an Order pursuant to Idaho Code §42-701 requiring measurement of all active irrigation wells within WD61E.

Inaccurate CDN flow-meter

On two separate occasions, Department staff has validated the accuracy of the "elk-pen" flow-meter and determined it to be accurate at the measured rate of flow (1.2 to 1.3 cfs). Staff also verified that the required insertion depth and "K" factor for the existing meter were correct. The measured flows were also fairly close to those estimated by the Watermaster (1.48 cfs) at the bubbler near the upper diversion. Because the insertion depth and "K" factor remain constant with this type of flow meter, accuracy may not remain linear as velocities change. In comparing the manufacturer's recommendations and specifications with the actual installation, some inconsistencies are evident. The meter is mounted at twelve o'clock and should optimally be located at three o'clock or nine o'clock. The meter was installed less than the minimum required distance (10x pipe diameters) below any obstruction in the pipe (45° elbow) and is also located too close to the downstream valve. The Department intends to verify accuracy of the existing meter at higher flow rates if it is not replaced prior to the 2015 season. Both the Department and the Watermaster agree that measurement should be provided by CDN proximal to the upper diversion to provide accurate measurement. The Department will work with the Watermaster and CDN to ensure that diversions from Cold Springs Creek are properly measured.

In a letter dated August 6, 2014, John McCallum responded to the Watermaster's request for the users on Cold Springs Creek to maintain the required control structures and measuring devices. The response from Mr. McCallum (enclosed) indicates CDN's willingness to make the necessary changes or repairs to enable the Watermaster to appropriately administer deliveries from Cold Springs Creek.

CONCLUSION AND PLAN OF ACTION

- 1) The Department intends to monitor the delivery of water from Cold Springs Creek and to support the Watermaster to ensure water rights are appropriately delivered. All water users must comply with the measuring and diversion works requirements to the satisfaction of the Department and the Watermaster.
- 2) If the Department confirms that an unauthorized use has occurred within the preceding twelve months, the Department will consider initiation of a formal enforcement action. Any unauthorized diversions identified by a water user or their agent should be reported to the Watermaster for investigation and documentation. The Watermaster may request support or assistance from the Department in determining if a delivery should be curtailed.
- 3) Local reservoirs including those referenced in DAR's complaint will be further reviewed by the Department. If the Department determines that storage rights are required, the owner will be notified that storage must not occur unless a valid storage right is secured.
- 4) Further study may be necessary to determine the extent of ground water and surface water interactions within the Cold Springs drainage. However, ground water and surface water rights are currently administered separately.
- 5) The Department will issue an Order requiring measurement of all irrigation wells within WD61E.

The Department understands the importance of proper distribution of water within the Cold Springs Drainage. The Department also expects that WD61E, the Watermaster and the users will cooperatively and actively move forward to help in resolving any issues and providing the tools necessary for proper administration and delivery. Please feel free to contact me regarding any additional concerns or questions you may have.

Respectfully,



Rob Whitney
Water Compliance Bureau

cc:

Rich Neal - Watermaster, WD61E
Double Anchor Ranches, Glenns Ferry
Casa Del Norte, Glenns Ferry
Paula Riggs, Secretary for WD61E