



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 3, 2017

ECKHARDT FAMILY LLLP
JAMES L ECKHARDT
1275 JENKINS CREEK ROAD
WEISER, ID 83672-5158

RE: Hoff Complaint-Field Investigation (Case No. E2017-1235)

EXHIBIT

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Dear Mr. Eckhardt,

On September 26, 2017, representatives of the Idaho Department of Water Resources (Department) conducted a field investigation in response to a complaint received on August 25, 2017, from John and Christy Hoff. The complaint alleges that there are; 1) unauthorized ponds on the property that are tributary to Jenkins Creek; and 2) unauthorized spring developments or stockwater diversions along Tar Gulch. Your assistance during the field investigation was helpful and greatly appreciated. The purpose of this letter is to convey the Department's findings, conclusions, and required actions for Eckhardt Family LLLP, subsequent to the investigation.

Summary based on the Field Investigation Report (Attachment A)

- 1) Twelve (12) of the fourteen (14) ponds identified on Attachment A are within the Jenkins Creek drainage. Pond nos. 1-6, 9-13, and 16, require water rights since they are impounding water that would otherwise flow down naturally defined channels that are tributary to named streams such as Jenkins Creek, Scott Creek, and Monroe Creek. None of the ponds included in the report were determined to impound solely diffuse water, and none appear to be authorized by existing, valid water right(s).
- 2) Five (5) spring developments are located within the drainage locally known as Tar Gulch. Spring development nos. 1, 3, and 4 (Attachment A) divert water to five (5) stockwater tanks. Tank nos. 1 and 4-7 (Attachment A) do not appear to be associated with any water right(s).

Diversion and use of water without a valid water right is unlawful pursuant to Idaho Code § 42-351. To avoid a formal enforcement action, the Department requires that all structures impounding water without a water right must have outlet works or conduits installed and fully open, or impoundments breached to ensure that surface and/or spring water is allowed to freely flow downstream within the naturally defined channels. If you intend to resume diverting, storing, or otherwise using water at these locations, you must demonstrate the uses are authorized by existing water right(s) or you must obtain a permit to appropriate water for these stockwater ponds and spring developments. No water may be stored or diverted until a valid water right is secured for the diversion.

Please provide a written response to this letter within the next thirty (30) days that proposes both a plan and timeline to meet the requirements noted above. Feel free to contact me or Nick Miller (Regional Manager) at the IDWR Western Regional office (208-334-2190) if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Boe', with a stylized flourish extending to the right.

Erik Boe, P.E.
Staff Engineer, IDWR Western Regional Office

CC: Nick Miller, IDWR, Western Regional Manager
Cherie Palmer, IDWR, State Office
Rob Whitney, IDWR, State Office

Enclosures: Field Investigation Report (Case No. E2017-1235)

Field Investigation – Narrative

Investigator: Cherie Palmer

Date: October 11, 2017

On September 26, 2017, I conducted a field inspection along with Erik Boe of Western Regional office in response to a complaint received on August 25, 2017, from John and Christy Hoff. The complaint and subsequent office visit by the Hoffs indicated that their upstream neighbor, Jim Eckhardt, installed several illegal ponds in Jenkins Ck. The Hoffs also had concerns in a drain, unofficially known as Tar Gulch. The claim is there were many illegal structures along Tar Gulch for stockwatering purposes and water was being diverted or prevented from going downstream to the Hoff property.

Background: Hoffs initially filed a complaint in 2014, which resulted in a field inspection by Rick Collingwood of Western Regional Office. Rick inspected ponds #1-6 during his inspection. Rick concluded that the ponds have caused a reduction in the Jenkins Creek drainage. Steve Lester followed-up with Eckhardt by sending a letter suggesting he file applications for permit to cover the unauthorized storage of water. Eckhardt responded by filing 5 applications for permit for ponds 1-6 and 9 & 11. Western Region helped Eckhardt file the applications. Hoffs subsequently protested to all 5 applications for permit, citing injury to their water rights. Before a hearing could be held, on January 29, 2016, Eckhardt withdrew his applications claiming that all the water he diverts/impounds is diffuse surface water and is not subject to public appropriation. On August 25, 2017, Hoffs submitted a second complaint to the Department.

Field Inspection: Before the field visit, I studied Google Earth imagery along with NAIP and DRG images of the subject lands to ensure that I documented each and every pond on the Eckhardt property. I found some ponds outside of Jenkins Ck that weren't subject to the Hoff complaint but, deserve attention since they are within the scope of my goal. The goal of the field visit was to determine if diffuse surface water is the only source of water Eckhardt is impounding in the 14 ponds I identified on his property. I studied the landscape upstream of each pond and downstream to determine if a defined channel existed, especially downstream. The attached spreadsheet itemizes the findings I found during the inspection in addition to some findings that Rick collected in 2014.

Conclusion: Ponds 1-6, 9-13 and 16 all require water rights since they are impounding water that could enter a defined channel that is tributary to another stream i.e., Jenkins Creek, Scott Creek, and Monroe/Sheep Creek.