



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Brent L. Larson
Forest Supervisor
Caribou-Targhee National Forest
1405 Hollipark Drive
Idaho Falls, ID 83401

February 17, 2010

Dear Mr. Larson:

I just reviewed your letter to our office dated December 9, 2009 regarding water rights on Jackknife Creek and Deep Creek. I apologize for the late response. Ernie Carlsen retired from IDWR in late January. As would be expected, some items got temporarily overlooked in the transition. I have recently been hired as the Water Resources Program Manager for the IDWR Eastern Region. I hope I can be of assistance on this issue and any other water rights questions you may have in the future.

Our records indicate that there are three water rights that authorize diversion of Deep Creek water for irrigation. All three of these water rights are located in the upper section of Deep Creek. They are as follows:

Number	Name	Priority	CFS
24-10704	Wolfley, Rex	5/14/1885	0.78
24-10705	Bruce, Edward	5/14/1885	0.15
24-10706	McNeel Trust	5/14/1885	1.56

Rex Spackman has a water right on Jackknife Creek (24-2030) with a priority date of 9/26/1968 and a diversion rate of 0.72 cfs. The Spackman water right does not make any reference to Deep Creek. However, part of the authorized place of use is located on the east side of the Deep Creek restoration channel. I am not familiar with the area or Mr. Spackman's irrigation system. It is unclear how Mr. Spackman irrigates the acres on the east side of Deep Creek. In any event, Mr. Spackman is limited to using water diverted from Jackknife Creek. He should not be using water arising in Deep Creek to irrigate his acres.

There are two water rights on Jackknife Creek that specifically permit the use of Deep Creek as a conveyance channel. They are as follows:

Number	Name	Priority	CFS
24-6A	Robinson, John	5/15/1885	0.92
24-10710	Brown, Janene	5/15/1885	0.73

The source listed in these two water rights is Jackknife Creek, not Deep Creek. These water rights do not authorize any diversion of Deep Creek water. Essentially, the water users' re-diversions from Deep Creek are limited to the amount of water physically injected into Deep Creek. If no water is injected into Deep Creek by Robinson or Brown (or Spackman, if applicable), no water may be diverted from Deep Creek.

In order to legally divert Deep Creek water, Robinson, Brown or Spackman would need to file a transfer with our office, adding Deep Creek as an additional source on their water rights. However, given the reported propensity of Deep Creek to run dry in the summer, it is unknown whether such a transfer would be successful.

You mentioned in your letter that, because the Jackknife diversion structure is in disrepair, Robinson (and likely Brown) diverted Deep Creek water in 2009. This diversion was not permitted under the terms of their water rights. If the Jackknife diversion structure is not repaired, and Robinson and Brown continue to divert Deep Creek water, IDWR may choose to issue a Notice of Violation and begin an administrative action which could lead to civil penalties.

Even if the Jackknife headgate is repaired, there may still be a problem if Robinson and Brown (or Spackman) divert more from Deep Creek than they physically inject into the creek. IDWR may also issue an order requiring Robinson and Brown to install measuring devices on the injection and re-diversion sites to ensure that the re-diversion out of Deep Creek does not exceed the actual injection rate.

As always, we hope that the parties involved in the stream restoration effort can find a resolution to this matter without resorting to administrative enforcement actions. Ideally, Spackman, Robinson and Brown would find the means to repair the Jackknife diversion structure. Further, Robinson and Brown will limit their diversion from Deep Creek to the water that is actually brought across from Jackknife Creek.

Please notify me if the parties are able to find a workable solution to the problem. Feel free to contact me if you have any additional questions.

Sincerely,

James Cefalo
Water Resources Program Manager
IDWR – Eastern Region



United States
Department of
Agriculture

Forest
Service

Caribou-Targhee
National
Forest

1405 Hollipark Drive
Idaho Falls, ID 83401
208-524-7500

File Code: 2540

Date: December 9, 2009

Ernest L. Carlsen
Idaho Department of Water Resources
900 North Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RECEIVED

DEC 11 2009

Department of Water Resources
Eastern Region

Dear Mr. Carlsen,

The Caribou-Targhee National Forest is concerned with water uses occurring on Jackknife Creek and Deep Creek and the associated impacts to a stream restoration project completed in 2008 on Deep Creek in the Salt River drainage.

The Forest Service has partnered with Rex Spackman, Bonneville County, Trout Unlimited, Natural Resources Conservation Service (NRCS), Idaho Fish and Game and others to restore fish passage in Deep Creek at the Jackknife Road crossing and downstream on over 1000 feet of severely degraded stream channel on Mr. Spackman's property.

As a result of this project a situation on Jackknife Creek has come to our attention that appears to severely jeopardize, limit and inhibit the success of this project. A water diversion structure on Jackknife Creek in the SWNWNE of Section 27, T4S, R46E, for water right nos. 24-00006A and 24-02030 diverts water which is transported easterly through a ditch and injected into Deep Creek (figure 1). The water is then re-diverted back out of Deep Creek into a ditch and onto fields for irrigation (figure 1). It is my understanding that these water rights are owned by Mr. JP Robinson and Mr. Spackman.

The problem appears to be that Jackknife Creek has downcut, disconnecting the stream from the diversion structure, rendering the diversion inoperable and completely nonfunctional. As a result of this downcut, water can no longer be diverted from Jackknife Creek. However, irrigation continues. Mr. Robinson now relies solely on water diverted from Deep Creek at the point of redirection even though no water is being injected from the Jackknife diversion to be redirected at the Deep Creek redirection point. There are times when all the water from Deep Creek is being diverted to irrigate the Robinson fields. This severely diminishes the flow of water in and at times completely dewater portions of Deep Creek below this point of redirection. This is a significant change in the customary, expected or historic flow of water in Deep Creek.

This occurred in 2009, the year after the Deep Creek restoration project was completed. This practice is jeopardizing the success of the project. Revegetated stream banks and native Yellowstone Cutthroat trout survival are unduely stressed and threatened in the newly restored channel.

The Forest Service, NRCS, Trout Unlimited and others are working with both Mr. Spackman and Mr. Robinson to restore and improve the non-functioning Jackknife diversion structure. In an effort to expedite these efforts and encourage commitment to an appropriate and timely resolution we are requesting that the Idaho Department of Water Resources investigate this



matter with respect to the Jackknife Creek water rights and their relationship to the diversion of water from Deep Creek that threatens this cooperative restoration project. We would also ask that the Department work with us, the other cooperators and the water right holders to minimize the impacts to both the restoration project and the irrigators to preserve the greatest degree possible our common interests and dependency on the waters and resources associated with Deep Creek and Jackknife Creek.

If you have any questions about this matter please feel free to contact me or Louis Wasniewski, Forest Hydrologist on my staff to discuss this issue in more detail.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brent L. Larson", written over a light blue horizontal line.

BRENT L. LARSON
Forest Supervisor

Enclosure

cc Louis Wasniewski, Forest Hydrologist
 Dennis Duehren, Acting Soda Springs District Ranger
 Jack Isaacs, Soda Spring District Ranger

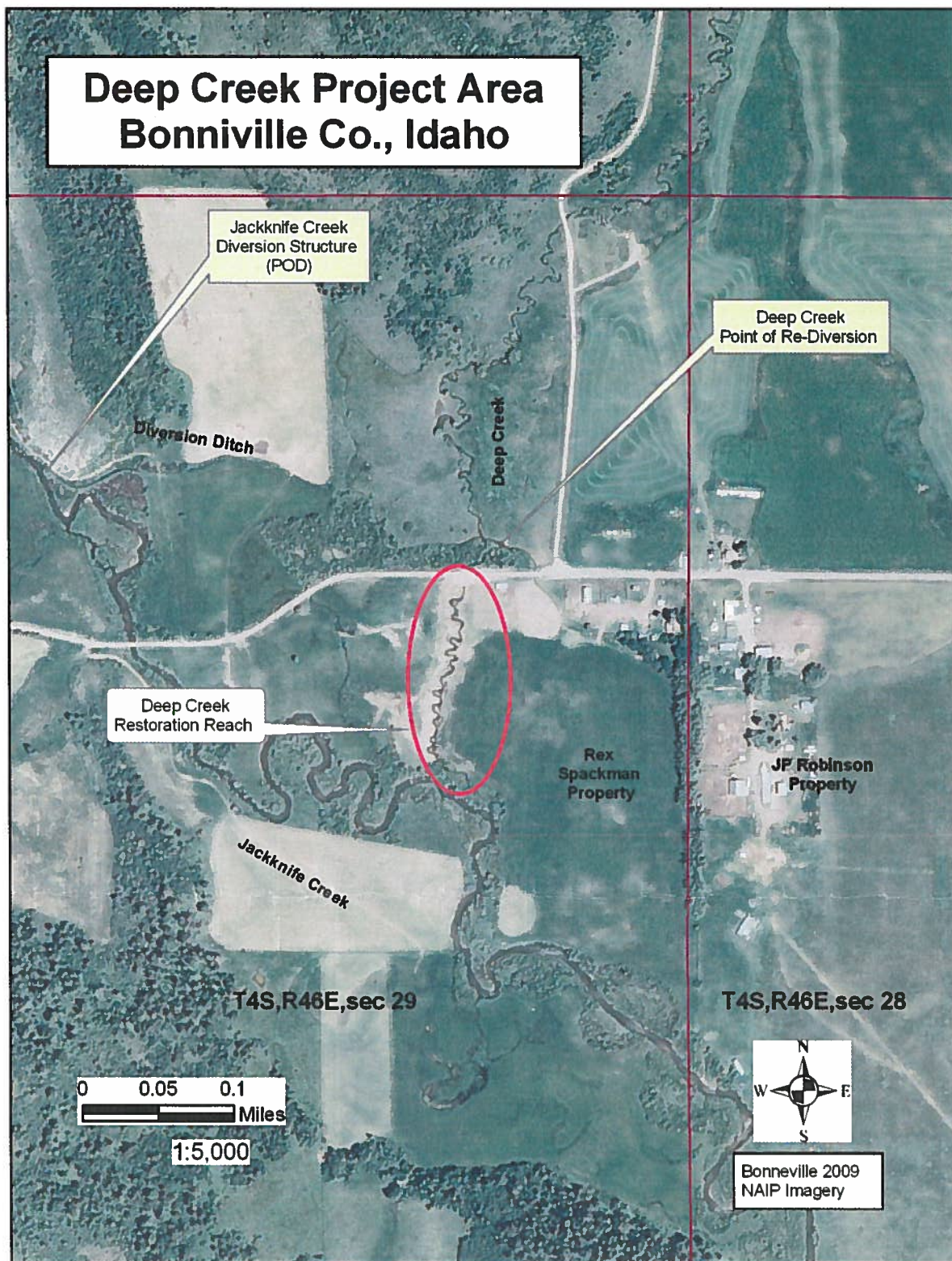


Figure 1: Site Map

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IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

10/4/2010

WATER RIGHT NO. 24-2030

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CONNIE SPACKMAN
Current Owner	REX A SPACKMAN
	181 JACKKNIFE RD
	FREEDOM, WY 83120
	(208)873-2614

Priority Date: 09/26/1968

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
JACKKNIFE CREEK	SALT RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/15	0.72 CFS	108 AFA
Total Diversion			0.72 CFS	

Location of Point(s) of Diversion:

JACKKNIFE CREEK	SWNWNE	Sec. 29	Township 04S	Range 46E	BONNEVILLE County
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Place(s) of use:

Place of Use Legal Description: IRRIGATION BONNEVILLE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04S	46E	29		NWNE	3.7		SWNE	4.4		SENE	27			
				NESE	0.9									

Total Acres: 36

Conditions of Approval:

1.	C18	This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
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Dates:

Licensed Date:

Decreed Date: 05/31/2007

Permit Proof Due Date: 7/1/1933

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

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