



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

July 5, 2013

ALLAN PURCELL
98 PURCELL RD
LEADORE ID 83464

RE: Water Rights 74-1834 and 74-39B

Dear Mr. Purcell:

The Idaho Department of Water Resources received your letter dated June 27, 2013, regarding water rights that may be appurtenant to your property located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T16N, R25E, B.M. The water right records show that Right 74-1834 authorizes you to divert water from Big Timber Creek for the irrigation of 23 acres within that 40-acre tract. No other water rights are appurtenant the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T16N, R25E, B.M. I've enclosed a copy of the partial decree for Right 74-1834.

The right you mention in your letter, No. 74-39B, is appurtenant to land located in Sections 21 and 22 of T15N, R26E. See the attached partial decree. A 1950 water right transfer confirms the place of use for this right as including 40 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T16N, R25E, B.M. However, the decree for the Lemhi Adjudication from the 1980s does not include the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T16N, R25E, B.M., within the authorized place of use. Copy enclosed. It may be that irrigation of the parcel was discontinued sometime between 1950 and the late 1970s. The 1992 *Memorandum Decision and Order in the Matter of Application for Transfer No. 3687* also indicates that the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T16N, R25E, B.M., is not within the authorized place of use for Right 74-39B. Copy enclosed.

In 1993 Transfer No. 4071 confirmed the entire place of use for Right 74-39B as being within Section 22, T15N, R25E. In 2001 the place of use was changed to include some land in Section 21, T15N, R25E, via Transfer No. 69170. This is the place of use confirmed in the partial decree issued in the Snake River Basin Adjudication in 2008.

As for the opportunity to divert high water, SRBA Judge Wildman ruled in January of 2012 that high water may be diverted and used by holders of existing valid water rights for irrigation use within the Lemhi Basin, as long as all prior and future appropriated rights are satisfied. In other words, diversions of high flows are not water rights, they are subject to current and future valid water rights, and they are limited to land with valid irrigation rights. To begin irrigating land that currently has no appurtenant water right, or to establish a priority date for a high water diversion, a permit would be required. That may be why you have heard that it is beneficial to have a permit to divert high water.

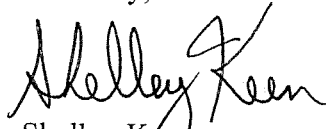
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I have enclosed a water right application for you. During the application process, the Department is required to publish notice of the application in the local newspaper, and the application may be protested. If the application is protested, there are informal and formal options for resolving the protests.

Also, please note that the 2011 permit authorizing James Whittaker to divert high flows from Big Timber Creek carries significant restrictions imposed to promote the reconnection of Big Timber Creek with the Lemhi River to enhance habitat for threatened fish species. A copy of the permit is enclosed. It seems likely that any further permits to divert from Big Timber Creek, if they can be approved at all, would be subject to similar restrictions.

Please call, email, or stop by one of the Department's offices if you have further questions. You may reach me directly at 208-287-4947 or at shelley.keen@idwr.idaho.gov.

Sincerely,

A handwritten signature in black ink that reads "Shelley Keen". The signature is written in a cursive, flowing style.

Shelley Keen
Manager, Water Rights Section

Enclosures