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Department of Water Resources

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF WATERMASTER)
REGULATION OF WATER RIGHTS IN)
THE SQUAW RIDGE-OLA AREA)

**PRELIMINARY ORDER REQUIRING
CONTROLLABLE DIVERSION
WORKS AND MEASURING DEVICES**

The Idaho Department of Water Resources ("IDWR") tried to resolve water delivery disputes regarding several tributary surface water rights within Squaw Creek Water District No. 65A in 2003. The water rights are held by several owners and include multiple uses, including instream flow for stockwater use. Delivery of instream stockwater rights is a new challenge for waterusers, watermasters and IDWR. Based on lessons learned in 2003 and to respond to probable calls for delivery of instream stockwater rights in 2004, IDWR makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Water rights in the Squaw Ridge-Ola area include those held by Carlock, Derbonne-Mooers ("Mooers"), MacKenzie and Redman as set forth in Attachments A and B. The Carlock water right will not be deliverable by the watermaster unless decreed by the Snake River Basin Adjudication (SRBA) Court.
2. The lack of controllable diversion works and measuring devices prevented effective distribution of these water rights in 2003.
3. Field measurements by IDWR determined that 13 gpm are needed at the upstream beginning point of Mackenzie's instream stockwater rights to provide a wetted surface for beneficial use at the downstream end point of those rights.
4. IDWR hosted a meeting in Ola on April 29, 2004, to discuss delivery of water rights in the Squaw Ridge-Ola area. All of the water right holders attended the meeting. IDWR provided criteria for management and delivery of water rights in this area.
5. The Squaw Creek Watermaster appointed Charles Wallace as Deputy Watermaster ("Deputy") as confirmed by the certificate of appointment issued by IDWR on April 30, 2004. The Deputy is authorized to respond to calls for delivery of water rights as set forth in Attachment C and this order.

6. As a result of that meeting, IDWR notified the parties on May 17, 2004, that controllable diversion works and measuring devices needed to be installed by June 30, 2004. The Deputy and IDWR were to inspect the work shortly thereafter, completing the necessary steps for the Deputy to respond to delivery calls.
7. Consequences for not meeting the June 30 deadline were noted in the May 17 correspondence to the parties. The period of May 17 to June 30 was a reasonable time to install controllable diversion works and measuring devices.
8. Controllable diversion works and measuring devices have not been installed to date.
9. The Deputy cannot effectively deliver water in the absence of controllable diversion works and measuring devices.

CONCLUSIONS OF LAW

1. The IDWR Director ("Director") is authorized to supervise distribution of water rights in a water district. Rights are to be distributed based on priority (I. C. § 42-602).
2. Tributary surface water within Squaw Creek Water District No. 65A is subject to Watermaster control under the Director's supervision. This authority has been delegated to the Deputy (I. C. § 42-604).
3. The Deputy can close or curtail diversion works in the Squaw Ridge-Ola area to deliver senior water rights (I. C. § 42-607).
4. I. C. § 42-701 authorizes the following actions:
 - The Director can require controllable diversion works and measuring devices.
 - Reasonable time must be provided to install controllable diversion works and measuring devices upon notice by the Director and assuming due diligence by the water right holders in completing the work.
 - The Deputy can shut off and refuse to deliver water to diversions lacking controls and/or measuring devices.
 - Controllable diversion works and measuring devices are subject to approval by the Director and the Deputy.
5. Instream stockwater rights are limited to 13,000 gallons per day. Although water rights for stockwater limited to 13,000 gallons per day are exempted from the requirement of

measuring devices by I. C. §§ 42-701(7) and 42-1401A, the Director may require measuring devices along streams in any district (I. C. § 42-703).

6. The Director may pursue a notice of violation for failure to comply with Idaho statutes. Civil penalties of \$150 per day may be levied for each day of a continuing violation (I. C. § 42-1701B).
7. IDWR should order water right holders in the Squaw Creek-Ola area to install controllable diversion works and measuring devices because the above referenced work was not completed by June 30, 2004.
8. Failure to complete the work within a reasonable time should warrant a notice of violation for each diversion point and/or measuring device point not in compliance with the requirements of the water district. Civil penalties should accrue from the end of the reasonable period of time already provided to complete the work.
9. The Director should instruct the Deputy not to deliver water to any water right lacking controllable diversion works and/or measuring devices.
10. The Director should instruct the Deputy to deliver water within the guidelines of Attachment C.

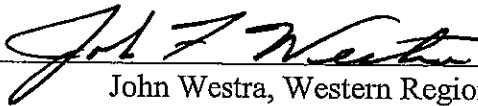
ORDER

1. Controllable diversion works for each point of diversion for water rights identified in Attachments A and B shall be installed by July 30, 2004. Exceptions shall be made for any instream stockwater right in which diversion works are not present.
2. Measuring devices in reasonable proximity to the diversion points for water rights identified in Attachments A and B shall be installed by July 30, 2004. For each instream stockwater right, a measuring device shall be installed at the upstream beginning point of the instream reach. The Carlock water right shall not be required to install a measuring device unless the right is decreed by the SRBA Court.
3. Controllable diversion works and measuring devices shall be subject to approval by the Deputy and IDWR. The Deputy and IDWR shall inspect the work on or about August 2, 2004.
4. For each diversion point or each beginning reach of an instream stockwater right without the controls and/or measuring devices in place by the time of the inspection, the Director shall pursue a notice of violation seeking civil penalties of \$150 per day per violation. Penalties shall begin to accrue on July 1, 2004, and shall continue to accrue until the

work has been completed and approved by the Deputy and IDWR. Penalties shall be waived for work completed by July 30, 2004.

5. In responding to any calls for delivery of water, the Deputy shall deny delivery of water to any water right not demonstrating controllable diversion works and/or measuring devices as specified above.
6. Delivery of water by the Deputy shall occur within the guidelines of Attachment C.

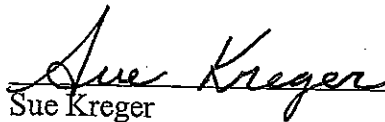
DATED this 8th day of July, 2004.



John Westra, Western Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of July 2004, I mailed a true and correct copy, postage prepaid, of this Preliminary Order to those listed:


Sue Kreger
Administrative Assistant

ERIC HERR
SQUAW CREEK WATERMASTER
8917 BUTTE RD
SWEET ID 83670

CHARLES WALLACE
DEPUTY WATERMASTER
PO BOX 27
OLA ID 83657

JACK MOOERS
PO BOX 70
OLA, ID 83657

JACK MOOERS
3940 HANCOCK ST
SUITE 202
SAN DIEGO CA 92110

CHARLES MACKENZIE
PO BOX 1005
CALDWELL, ID 83605

CARROLL CARLOCK
PO BOX 60
OLA, ID 83657

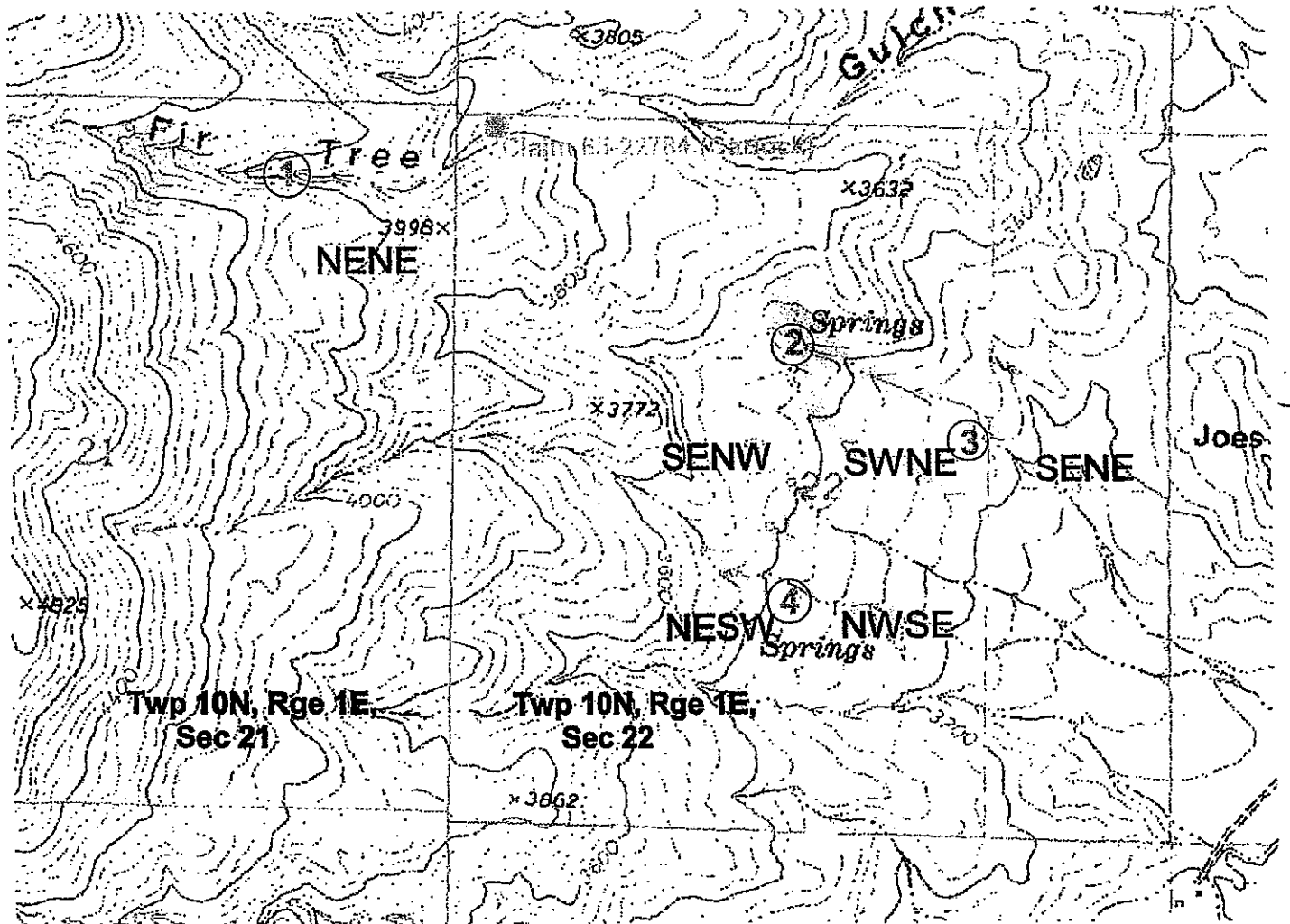
MICHAEL & SARAH REDMAN
2309 N 18TH ST
BOISE ID 83702

CHARLES HONSINGER
RINGERT CLARK CHRTD LAWYERS
PO BOX 2773
BOISE ID 83701-2773

ED SQUIRES
HYDRO LOGIC INC
1002 W FRANKLIN ST
BOISE ID 83702-5431

SQUAW RIDGE - OLA WATER RIGHTS DELIVERY LIST, PRIORITY ORDER BY DELIVERY POINT									
DELIVERY POINT #1: Fir Tree Gulch Creek									
REDMAN	License	65-13156	3/19/1990	0.20 cfs/9.0 af storage					Diversion downstream
MOOERS	Permit	65-13598	2/23/1995	1.00 cfs/26.2 af storage					Diversion at Point #1
Pat Carlock has Snake River Basin Adjudication Claim 65-22784 waiting to be decreed; not deliverable now. If decreed, the right will be deliverable. Elements of the claim are as follows:									
CARLOCK	Claim	65-22784	4/1/1865	0.02 cfs				INSTREAM STOCKWATER	
DELIVERY POINT #2: Springs (feeds delivery point #3)									
MOOERS	Decree	65-3025A	5/1/1890	0.10 cfs					
MOOERS	Decree	65-22597	5/1/1890	0.02 cfs					Not to exceed 0.10 cfs when combined
DELIVERY POINT #3: Unnamed Stream									
MACKENZIE	Decree	65-18442	5/1/1880	0.02 cfs				INSTREAM STOCKWATER	Note that delivery point #2 rights are junior to right 65-18442
REDMAN	Decree	65-3025X	5/1/1890	0.10 cfs					
REDMAN	License	65-13155	2/24/1990	0.20 cfs/9.0 af storage					
DELIVERY POINT #4: Springs									
MACKENZIE	Decree	65-22373	5/1/1880	0.02 cfs				INSTREAM STOCKWATER	
MOOERS	Permit	65-13599	2/23/1995	0.05 cfs					
MOOERS	Permit	65-13677	7/8/1996	0.18 cfs/1.1 af storage					

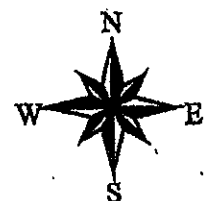
Water Rights for Regulation by Watermaster Fir Tree Gulch Creek & Springs/Unnamed Streams tributary to Squaw Creek



0.3 0 0.3 0.6 Miles

Prepared by Sharla Curtis
April 2004
USGS Topograph

- 1 - Fir Tree Gulch Creek Permit 65-13598 (Derbonne-Mooers),
Right 65-13156 (Redman)
- 2 - Springs Rights 65-3025A & 65-22597 (Derbonne-Mooers)
- 3 - Spring/Unnamed Stream Rights 65-3025X (Redman),
65-18442 (Mackenzie), 65-13155 (Redman)
- 4 - Unnamed Stream Right 65-22373 (Mackenzie),
Permits 65-13599 & 65-13677 (Derbonne-Mooers)



MANAGEMENT/DELIVERY CRITERIA - SQUAW RIDGE, OLA

Provided by IDWR

April 20, 2004

CALLS FOR DELIVERY OF WATER RIGHTS

Delivery can be made in priority date order to water rights based on **Decree, License or Permit**. Delivery to Beneficial Use Claims can be considered only after Decree, License or Permit water rights are fully satisfied.

Contact **Deputy Watermaster Charles Wallace**, phone 584-3540. Will respond within 24 hours.

\$50.00 fee per call will be charged to the caller, payable to Deputy Watermaster upon arrival.

Delivery will be made if:

- approved controllable/adjustable diversion works in place
- approved measuring device in place
- payment made to Deputy
- deliverable water can reach the point of diversion (no futile deliveries)
- reasonable beneficial use can be made of the delivered water.

Diversion works and measuring devices are subject to approval of the Watermaster/Deputy Watermaster and IDWR. The Redman/McKenzie stockwater diversion shall have a control device that can be finely adjusted and is not subject to plugging by debris.

No modifications/changes will be made to ditches, pipelines, excavations, sources, conveyances, points of diversions etc. without prior approval from the Watermaster/Deputy Watermaster and IDWR.

Caller must provide off-road transportation if needed for the Deputy Watermaster.

Stockwater calls - reasonable beneficial use in the defined place of use must occur (number of livestock). Determination left to Watermaster/Deputy Watermaster discretion.

Tampering with a regulated control or measurement device is illegal in a water district. Only the Watermaster/Deputy Watermaster can adjust these devices. Unauthorized tampering of devices is subject to criminal prosecution under I. C. § 42-802.

IDWR will respond to water user complaint/issue only after the caller has verified the following actions have been exhausted:

1. Approved diversion and measurement devices have been installed at the diversion(s) in question.
2. Call for water delivery has been made to the Deputy Watermaster, who has responded to the call.
3. Squaw Creek Watermaster has been consulted and responded but the complaint/issue has not been resolved.