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Working to protect and restore Western Watersheds

Western Watersheds Project

16 April 2010

Marvin C. and Irene Hutchings
1141 Highway 93 South
Salmon, Idaho 83467

RE: WWP's Objection to IDWR Water Rights Transfer #75604 on Twelvemile Creek

Dear Mr. and Mrs. Hutchings:

We have conducted extensive research into the water rights revolving around Twelvemile Creek and the former Twelvemile Creek Ranch that was originally owned by John C. Manfull. After the Manfulls sold it to Strouds in check, you eventually owned it and subdivided, selling off several parcels or lots to some of the current Twelvemile Creek residents including the Deutchmans (whose property has your newly proposed point-of-diversion ("POD") and the relatively new Idaho Department of Fish and Game solar-powered fish screen), Tom and Sandra Luce, Bill Montero, the Osgoods, Robisons, Cranneys, and others.

FACTS:

CORRECTIONS:

1. We were provided inaccurate, out-of-date, or misleading documents from some of our FOIA and Idaho Public Records information requests concerning the water rights, the new diversion structure, the fish screen, and the conveyance pipeline. Apparently, the diversion structure was designed to consolidate and handle more water rights than just yours, including a second pipeline. Also, originally the pipeline was supposed to be purchased, at least in part, with Federal Columbia River Basin Power System ("FCRPS") habitat mitigation funds administered by the Upper Salmon Basin Watershed Project ("USBWP"). However, we have since learned from further discussions and investigations, including materials provided by you and IDWR during our pre-hearing conference, that the original plan failed because several upstream Twelvemile Creek water users found out that they would no longer use gravity and may had to pump their water using electricity or diesel. With these unforeseen problems, several of the original water users pulled out of the agreement. Also, it appears that USBWP never was able to really close the deal and deliver the promised funding and contract.
2. With the failure of the USBWP anadromous salmonid conservation project for the pipeline, you decided to continue, but at your own expense. At the time, apparently, no other water users were involved in your conveyance pipeline project. The solar-powered fish screen and new diversion structure were constructed to the original design specifications (lockable headgates and valves for two pipelines) and built with public funding.
3. With only your pipeline installed and connected to the diversion structure, the other side was temporarily plugged, with the possibility of installing a second pipeline as described in the original plans and conservation proposal.
4. At the pre-hearing conference, you stated that the IDFG controlled the diversion structure. Upon further examination and discussions with IDFG Fish Screen Shop in Salmon, it was clarified that they only control, maintain, and lock the solar-powered fish screen, and not the headgate, which delivers irrigation water from Twelvemile Creek through your conveyance pipeline downstream to your fields and Bureau of Land Management lands. Apparently, according to IDFG, someone kept messing with the storage batteries and timers for the solar-powered fish screen and so, IDFG was forced to lock it, to protect the equipment and their settings.

5. IDFG made it clear that they do not lock or control irrigation diversions and they leave this up to a Water Master, irrigation company, or in your case, to you, as the water user. If there is a lock on this headgate, you have the key. If not, it is you or your agents that operate the headgate and determine when and how much water is delivered into your pipeline to downstream, irrigated lands owned, managed, or recently sold by you to other parties or since resold.

6. At the pre-conference hearing, you stated that the Luces do not have a water right for their land, but you did not seem to understand why. This letter is to correct that inaccuracy, and according to the IDWR records, database, and website (<http://www.idwr.idaho.gov/apps/ExtSearch/SearchWRAJ.asp>), the Luces hold two decreed and SRBA-adjudicated water rights for irrigation of their property:

Water Right #14167 with a 05-01-1955 priority date for 0.13 cfs
Water Right #4399A with a 11-23-1922 priority date for 0.12 cfs

We find this surprising and interesting since you sold the Luces their property and on their registered deed in Lemhi County it clearly states that the parcels of property included water rights, as filed at the Lemhi County Courthouse.

7. What is still not clear to me and no one has been able to explain adequately is why some of your water rights enjoy a December 24, 1894 priority date dating back to John C. Manfull and his December as do the water rights for Bill Montero, Craig Rafiner, David and Sharon Osgood, Justin and Kari Cranney, and Scott and Kimberlee Jones, while the Luces and some others have 1922 or 1955 priority dates. Even the water right that you transferred to the BLM after irrigating public lands that you did not own, but now have a permit to farm and ranch, enjoys an 1889 priority date (http://www.idwr.idaho.gov/apps/ExtSearch/DocslImages/c9sp01_.pdf).

This is hard to comprehend since the Luces' and their neighbors' properties were the original site of the Manfull homestead and ranch including an irrigated orchard on the site of the Luces' acreage. Also because Manfull's description of his POD, ditch, and place of use indicate the Luces' property as well as the neighboring property to the northeast, which included the site of the original home. In fact, some of the water users now claiming Manfull water rights and its priority date from Twelvemile Creek are much further upstream than the point of diversion, which is described as about 100 yards upstream from the Stage Coach Road along the Salmon River (now Hwy 93 S) or 600 yards upstream from the confluence of the Salmon River and Twelvemile Creek.

It is hard for us to imagine that the original owners irrigated lands on the riverside of the current HWY 93 South, rather than depending on flood and river water, if there was any irrigation or stockwater watering. If domestic livestock were grazed on the Salmon River riparian lands, we would believe that those animals would have obtained their water directly from the Salmon River or via water hauled from there into stock tanks or watering troughs.

It appears that the IDWR has made some administrative errors on setting the priority dates and places of historic use for Twelvemile Creek waters, but somehow, because the Luces in addition to submitting the copies of the registered Lemhi County Courthouse John C. Manfull 1894 documents, also submitted some documents that placed water use during the 1920s and 1955, they ended up with 1922 and 1955 water rights instead of water rights dating back to the 1880s. While these documents with more recent dates verify irrigation on the Luces' lands, they do not overrule the earlier date of use of 1894 and a priority date of December 24, 1894. From the IDWR docket, the Luces also submitted 1889 records from R.A. Goodell with two ditches, one on each side of Twelvemile Creek conveying water from a POD approximately 0.5 mile from the mouth to irrigated lands, including the Luces and their neighbors properties. This March 14, 1889 documentation of the historic water right was also filed with the Lemhi County Recorder of Deeds. Again, these are gravity-fed water rights and it is hard to conceive how landowners and water users upstream of this historic POD can claim water rights to irrigate and water livestock with this priority date.

8. At the pre-hearing conference the IDWR and you seemed to imply that the Luces were not using their water rights. In recent years, they have been fighting to have any water rights after initially being told by IDWR, despite the property deed you provided them with their purchase. Finally, the IDWR has acknowledged that their property does have water rights and they were adjudicated. Until they were preliminarily issued and then adjudicated, apparently the Luces fearing that they did not have water rights, did not irrigate the entire time of their purchase, thus the IDWR's implication. We all should acknowledge that the Luces have water rights attached to their property along Twelvemile Creek, as reflected by the IDWR database. However, there is still the question if the wrong priority date was assigned accidentally despite the due diligence of the Luces in supplying copies of the recorded water rights by Goodell from 1889 and Manfull in 1894, for the Twelvemile Creek Ranch, which you eventually bought and subdivided.

A 1909 Quick Claim Deed from the McNabs to the Strouds also speaks of the Manfull 1894 water rights attached to this land before it was subdivided. The 1922 remembrance of the orchard and irrigation ties back to Thomas J. Stroud's granddaughter. Of course, the established orchard at the site of the Lucases' property did not instantly occur in 1922, but was certainly established by then. It probably dated back another 40 years or more when Manfull created the Twelvemile Ranch and his relations had the Tenmile Ranch.

PROPOSAL:

1. Consider abandoning and restoring the stream banks and riparian area or screening the original POD with this transfer. The fish screen should meet the NMFS standards and guidelines for anadromous salmonid fish screens, not just for adults, but for juveniles also. To conform to IDWR regulations, the old POD if retained, in addition to being screened, should also have lockable and measurable headgates installed.
2. Agree to not object to the Lucases or any of their adjacent neighbors if they apply for a IDWR Water Rights Transfer, similar to yours, and move their POD to the same fish screen and relatively new irrigation diversion structure on the Deutchman's property, downstream of the Salmon-Challis National Forest boundary. These transferred water rights would use the other side of the diversion structure, which is currently not used and plugged, but was designed to handle a second conveyance pipeline similar to yours, but of a smaller diameter. WWP supports this option since surplus waters saved from increased efficiency in diversion, conveyance, and potentially application with sprinklers instead of flood irrigation, will be dedicated to instream flows benefiting ESA-listed Snake River Basin steelhead, bull trout, and Snake River spring/summer Chinook salmon.
3. Agree to an audit by the IDWR to verify how much water is being diverted at the new POD into your pipeline, how much water is being applied to your lands, the BLM lands farmed by you, and other lands that your more recently sold to other landowners near Twelvemile Creek and in and along the Salmon River and HWY 93 South. WWP wants it independently verified that you are using the quantity of water that you are entitled to on the designated lands for the designated acreage during the designated period of time. We also would like verification that the water saved by improved efficiencies in diversion, conveyance and use are being dedicated to the anadromous salmonid conservation and instream flows of Twelvemile Creek, as originally proposed for this project and which is the justification of the expenditure of public funds for the new diversion structure and fish screen, including their installation and regular maintenance.
4. Because Twelvemile Creek does not have a designated Water Master, and because so many additional water users are irrigating from this source water with your multiple subdivision and land sales, we would request that IDWR also verify that other water users of Twelvemile Creek are not exceeding their water rights including amount of water, period of use, place of use, and acreage of applications. In this proposal of WWP to withdraw its objection to your water rights transfer, we ask you to agree not to object to this stream audit for permitted water uses.
5. The Lucases (and others) may wish to pursue correcting potential clerical errors by the IDWR and re-establish their priority dates with their water rights tied to the original Manfull Twelvemile Ranch with the 1894 priority date. In this proposal of WWP to withdraw its objection to your water rights transfer, we ask you to agree not to object to these review and potential corrections to other priority dates for Twelvemile Creek water, including the Lucases and their neighbors.

In return, WWP is willing to withdraw its objection to your proposed Water Rights Transfer (75604) and will agree not to object to the other proposed Water Rights Transfers associated with water users that want to move their POD to yours and use your existing diversion structure and conveyance pipeline.

Now that spring has arrived, hope you are fairing well. I look forward to your response to our proposals. Please feel free to contact me via email or mail if you have any questions or additional concerns.

Sincerely,

Larry Zuckerman, Central Idaho Director
Western Watersheds Project
Salmon, Idaho 83467

DRAFT

XC:

Jon Marvel, Executive Director, WWP, Hailey
Laird Lucas, Advocates For The West, Boise