



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

April 29, 2010

Troy Foster
Watermaster WD 13-A
2063 E 1600 S
Preston, ID 83263

RECEIVED
MAY 03 2010
Department of Water Resources
Eastern Region

Re: Use of Palmer Pipeline on Cub River Irrigation Company's Middle Ditch; Delivery of Water Rights on Spring Creek

Dear Mr. Foster,

This letter documents certain verbal and e-mail communications that I have had with you over the past three weeks concerning water distribution issues on Spring Creek and use of the Palmer Pipeline from the Cub River Irrigation Company (CRIC) and Preston-Whitney Irrigation Company (PWIC) Middle Ditches.

Until further notice is given, the Idaho Department of Water Resources (Department or IDWR) continues to direct you to work with the managers of the CRIC and PWIC to prevent the flow of water from PWIC's pipeline or conveyance system from Lamont and Johnson Reservoirs to the CRIC Palmer Pipeline. This direction is provided given the issues raised by Mr. Golightly and the Department's need to obtain further documentation from PWIC and CRIC regarding the location of lands and identification of water users who own shares in both PWIC and CRIC who have received delivery of water via the Palmer Pipeline. The Department verbally requested from PWIC's attorney documentation about the shareholders and locations of shares common to both PWIC and CRIC. This issue was also recently discussed with CRIC's attorney. IDWR has not yet received the requested information. Please note that at this time we are only asking to prevent the delivery of any PWIC water from the Lamont-Johnson conveyance system over to the Palmer Pipeline. CRIC is not prevented from using the Palmer Pipeline to deliver water from the Cub River via the Middle Ditch diversion under CRIC's Cub River water rights.

Until further notice is given, the Department also directs you to deliver PWIC's Cub River water right 13-2 to the Middle Ditch diversion from the Cub River. The Middle Ditch from the Cub River is the point of diversion for this right based on Department records. IDWR records do not document that the PWIC Fill Ditch (aka Cub River-Worm Creek Canal) is the authorized point of diversion for right 13-2. The Fill Ditch therefore should not be used for delivery of right 13-2 until PWIC's water right transfer application is approved or other approval is issued by the Department. The Palmer Pipeline and other PWIC conveyances may be used to convey any portion of PWIC's right 13-2 to PWIC shareholders who have historically relied on deliveries from the Middle Ditch diversion out of the Cub River provided IDWR can verify that the place of use for such deliveries are within PWIC's authorized service area.

Regarding PWIC's protested water right transfer, you are advised that a pre-hearing conference on this matter is scheduled between the protestants and PWIC for Monday, May 3, 2010 at the IDWR Regional Office in Idaho Falls. IDWR has invited CRIC to attend this conference in order to provide an opportunity for all the parties to discuss the water delivery issues common to the parties that have been raised before the Department. Mr. Golightly expressed interest in the Department's facilitation of such a meeting and pre-hearing conference during a visit with the Director in Boise on April 9, 2010. Your presence at the conference is not required.

The Department again directs you to administer and deliver water rights by priority on Spring Creek consistent with the Department's correspondence to you dated May 14, 2009 (copy enclosed). Mr. Gib Hull must have an installed and functional measuring device before receiving delivery of any water from Spring Creek. Failure to maintain an adequate measuring device at Mr. Hull's diversion shall result in your refusal to deliver Mr. Hull's Spring Creek water rights.

The Department wishes to arrange a visit with you over the next month to review any diversions from Spring Creek and the Kirby Pond Drainage. The purpose of the visit to Spring Creek will be to investigate creek flows and assure that any diversions from the creek are lawful and in priority.

Please contact me directly at 208-287-4959 if you have any questions regarding these matters.

Regards,

A handwritten signature in black ink, appearing to read "Tim Luke", with a long horizontal stroke extending to the left.

Tim Luke
Water Distribution Section

Encl: Copy of IDWR Correspondence to

Cc: Gary Spackman, IDWR Interim Director
Jeff Peppersack, IDWR Boise
✓ James Cefalo, IDWR Eastern Region
Eldon Golightly
Rob Harris, Attorney, Preston Whitney Irrigation Co.
Randy Budge, Attorney, Cub River Irrigation Company