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June 8, 1999

Allen D. Merritt, P.E.  
Southern Region Manager  
State of Idaho  
Department of Water Resources  
1341 Fillmore St, Suite 200  
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RECEIVED  
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Department of Water Resources  
SOUTHERN REGION

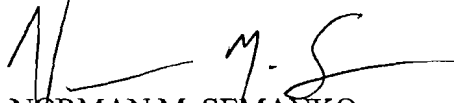
Re: Lake Cleveland Water Rights

Dear Allen:

I am writing in regards to a recent development in the diversion of water from Lake Cleveland. Our clients, George and Gwen Montgomery, hold a right (A45-00294D), yet to be adjudicated in the SRBA, to divert 1.6 cfs from the storage water of Lake Cleveland. However, when they attempted to exercise this right last year, the lake was too low for any possible diversion. Apparently Mr. Woody Anderson had diverted water in excess of his purported right from Lake Cleveland, a practice that he is continuing today. Even if Mr. Anderson is entitled to the full extent of his claimed right, 3.3 cfs (A45-00294C), in addition to claims acquired from Mr. Kyle DeNaughel, 2.2 cfs (A45-0029E), he still may only legally divert 5.5 cfs (275 inches) from Lake Cleveland. Apparently Mr. Anderson has been diverting as much as 12 cfs (600 inches) from Lake Cleveland, even at times when Marsh Creek is running full.

Clearly, Mr. Anderson is not entitled to divert this amount of water from the lake. Diverting this much water from the lake is not only unlawful, it is unnecessary and wasteful at this time of year. Where sufficient water is running in the creek, any diversion from the lake affects storage rights to be used later in the year. Mr. Anderson's unlawful action wastes storage water from the lake essential to our clients' water right. As directed by statute, Idaho Code § 42-607, the watermaster must close Mr. Anderson's headgate to the extent he does not have an adjudicated, decreed, permit or licensed right to 600 inches from Lake Cleveland. In addition, wasteful diversions cannot be allowed to continue under Idaho Code § 42-916. Again, this diversion affects our clients' interest in water from Lake Cleveland and we would request immediate action on this situation. Please feel free to contact me if you have any questions.

Sincerely,

  
NORMAN M. SEMANKO

cc: George and Gwen Montgomery