

State of Idaho
Department of Water Resources
900 N. Skyline Dr. Suite A
Idaho Falls, Idaho 83402-1718

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AUG 06 2009

Department of Water Resources
Eastern Region

Attention: Ernie Carlson:

This letter is written to address statements made in protest letters sent to the Department of Water Resources (DWR) concerning my application to change the diversion point of my freshet water rights in Garden Creek. The Garden Creek water system has three main laterals: north, south, and central, which diverge from the main Garden Creek channel. I presently irrigate from the central lateral which has several tributaries. Two of these tributaries run through my property and also serve numerous other users above and below my property. Since all protests are potentially a matter of public record, I will address the concerns of each protest for the benefit of all, in this communication. I welcome further discussion from those having a legitimate right to comment. Some facts concerning my application for a freshet water diversion change are as follows:

1. Despite statements to the contrary made by several protestants, I have the right, by means of a legal deed restriction, to install a pipeline to access water from the main channel of Garden Creek through the property of Dennis and Yvonne Toney. This water would be delivered by means of a pumping system to my property on the bench to the north, above Dennis and Yvonne Toney. This right was procured when I sold the property to the Abrams at a reduced price. This easement remained intact when the property was purchased by the Toneys, as well as my rights to use the pasture for grazing. In effect, I purchased these rights by reduction of the sales price of the land. I can install the pipeline either in the ground or above ground as the Toneys prefer. Now is a perfect time to install the pipeline since the Toneys have over-grazed the pasture killing most of the grass.

The Toneys tried to coerce me to release my rights soon after they purchased the property. I explained to them then that I planned to put in the diversion when I was in a position to do so financially, and had application approval. Once again they are trying to coerce me to release my rights by using members of the Garden Creek Water Company to their advantage. Some members of the Garden Creek Water Company are colluding with the Toneys in attempt to block approval of my request for diversion. However, to resolve the easement issue without litigation, I would be willing to pay the Toneys 3 times what I sold the property to the Abrams for.

The diversion has never been proposed to be in the Toney's "back yard" and no one would be "running through the Dennis Toney family's backyard" as falsely stated by Leland Armstrong. A simple check of the public record would reveal its location. Any reasonable person would simply ingress and egress to maintain the system by way of the easement right-of-way. The diversion would be built to conform with DWR standard . .

There has been no harassment of the Toneys by me. Yvonne Toney came to my shop while I was repairing her lawn tractor free gratis, and suggested that she and Dennis would like to share in the cost of installing a diversion on the property if they could also install a pump to water the pasture. I replied to her this arrangement would be agreeable to me if they have water rights. Whether or not they have water rights needs to be confirmed by the DWR.

2. I have never at any time claimed that I had approval from the Garden Creek Water District members for my request for diversion, or used "false pretenses" as claimed by Reed Capell. Protestants suggest that I need the approval of the water users for a diversion change. As stated by Leland Armstrong, the matter was discussed at our March 9, 2009 district water meeting. There was no disapproval expressed against the diversion at the meeting, as the minutes of the meeting reveal.

Upon my request, Dennis Dunn of the State Department of Water Resources who was present at this meeting, explained the legal process for a diversion change to the group. I followed this process making the proper and legal application, which allows Garden Creek water users to voice their opinion. The DWR makes the final decision. Reed Capell, Grant Olson, Calvin Monson, Bruce Wheatley were not in attendance at this meeting

Cecil states he is strongly opposed to my request. I strongly disapprove of a double standard! When Cecil changed his diversion point from his private lateral and went to a sprinkler irrigation system out of the main channel, did he discuss the matter and bring it to a vote of the Garden Creek Irrigation Company? Did he go through the legal process and expense of application; advertising, protests, hearings, appeals, and written approval? This did not occur at any meeting that I attended. There is no record found confirming this process with DWR or Garden Creek Irrigation Company. DWR confirmed to me the law was the same then as now! My right to use water out of the main channel should be equal to any one with water rights to do so with approval of application.

Cecil claims to be the last water right user in the Garden Creek main channel. That discussion would be more appropriate between himself, Morris Toler, and Arimo Ranches.

3. Protestants have questioned my need for another diversion. The main channel has the potential to serve many more users than the lateral diversions. The whole system would be more more efficient and eliminate much waste if all users put in sprinkler systems as Cecil Armstrong has done. The proposed change of diversion point is to deliver my freshet water in a more efficient manner for my land than the central lateral is able to deliver. This change will include the use of pump and mainline for a sprinkling system. I am not proposing a change of diversion point for my Old Ditch Company water rights, which supercede all freshet water rights. When the water decreases to 200 inches the diversion at the main channel would not be needed. The central lateral which I presently use, will continue to carry the water allocated to me by my Old Ditch Company shares.

As a result of my pumping from the main channel during the high water season, less demand will be made on the central lateral which has nine users. The capacity of the central lateral is not commensurate to the number of users as compared to the north and south laterals and main channel; especially for those of us on the lower end including myself, Reed Capell and Morris Toler. Users on the central lateral should have equal access to water as do all other water users. One solution to this inequity could be to enlarge the central lateral making the whole system more efficient for all users. This option would be favorable to me as all Garden Creek Company members would share the cost, rather than me bearing the cost exclusively of putting in my own diversion.

Another matter of concern to water users of the central lateral is the cattle feeding operation of Leland Armstrong which this lateral runs through. He mounds up straw and manure year after year in close proximity to the lateral instead of removing it. The densely confined cattle stand in the lateral, and contaminate it. During rain and thawing the

problem of contamination is severe. If Leland lived downstream from his feedlot, he'd be the first to complain about it.

4. Several protestants opposed Gary Blanchard's right to make a statement concerning impact of my diversion change on the main channel. The Department of Water Resource requested a statement from Gary Blanchard in his role of water-master as to the impact of a diversion change. As water master this is part of his responsibility. He was acting appropriately as he was hired to do by the Garden Creek Water Company. We are all aware that Gary Blanchard does not have the authority to authorize a diversion change nor did he claim to do so as was stated by protestors: Leland Armstrong, Grant Olson, and the Toney's (who are not members of the Garden Creek Water Company). I'm confident that Gary is aware that a diversion change must be approved by the DWR

Grant Olson has not been to any water meetings that I've attended in the last 30 years, including the one sighted in his protest. Yet, he states he will ask the water company members to remove Gary Blanchard from his job unless he removes his statement that was requested by the DWR. How pompous is that! Our minutes confirm Gary is doing a good job. Grant Olsons statement is out of touch with reality. Perhaps we need to determine Grant Olsons stakes in this matter? He is not a user of Garden Creek water nor is there a lateral to access his property. In fact, no other Garden Creek Company member can remember when there has ever been a lateral access for delivering water to his property. Do we misunderstand the law as described by Cindy Bird of DWR in our March 5th, 2007 district 29-B meeting? She stated that water rights not used for 5 years can be challenged. In simple terms, the state expects water rights users to "Use it or Lose it."

5. Morris Toler states that un-named springs feed Garden Creek and that my diversion would impact users below those springs. Everyone in the Garden Creek Water Company uses water from the main channel which is fed impart by springs. According to DWR Morris has filings on springs for stock water and domestic purposes (none for irrigation). According to maps with DWR my diversion plans have no impact on the claimed stock water springs he has filings on, since none are above the planned diversion site. He has access to water rights for irrigation from two sources; the main channel and the central lateral via the tributary that runs through my property.

Calvin Monson does not use his water rights and has not done so for many years. Bruce Wheatley withdrew his protest after discussing the facts of my proposal with me personally.

Maybe its time for the Garden Creek Water Company to operate in a more professional and legal manner; each user bearing the cost of measuring devices at their own point of diversion as Morris Toler suggested that I do.

I hereby respectfully request a preliminary informal discussion or hearing on this matter to be scheduled by Department of Water Resources.

Sincerely,


Klain Christensen
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8/6/09

cc: Cecil Armstrong, Leland Armstrong, Reed Capell, Calvin Monson, Grant Olson.
Maurice Toler, YVonne and Dennis Toney, Bruce Wheatley