



State of Idaho

DEPARTMENT OF WATER RESOURCES

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December 16, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

Thomas J. Budge
Racine, Olson, Nye, Budge, & Bailey
PO Box 1391
Pocatello, ID 83204-1391

RE: December 3, 2008 Letter Concerning Anderson Spring

Dear Mr. Budge:

I received your correspondence dated December 3, 2008 that requested the Idaho Department of Water Resources (Department) investigate on behalf of your client, Larry Matthews, a potential unauthorized use of water right 13-4283 from Anderson Spring by a Mr. Blake Atkin. Based on the descriptions provided in your letter it appears that Mr. Atkin may have created a new point of diversion by installing a new pipeline at the spring source. Our records do not appear to authorize a second point of diversion from the spring. The Department will contact Mr. Atkin concerning this added point of diversion and any additional uses from the spring. We will request Mr. Atkin to cease and desist from further diversion of water from the additional point of diversion if he does not have a water right or water right transfer authorizing the new point of diversion and or any additional use, including storage of water in additional ponds. I will forward a copy of our letter to your office for Mr. Mathews' review.

In review of the water right records from Anderson Spring we found only three valid water rights or water right claims from this source. Right 13-4248 is a May 12, 1885 priority statutory claim for 0.06 cfs for domestic and stock water use owned by Larry Matthews. The stock water component of this claimed right is for 0.02 cfs and year round use, while the domestic component is for 0.04 cfs and year round use. Mr. Matthews also filed statutory claim 13-7648 in 2003 for 0.04 cfs year-round domestic use and also has a claimed priority date of May 12, 1885. The claimed domestic use claims includes one-half acre of irrigation associated with the home. This claim appears to be duplicative of claim 13-4248 and it is not clear to the Department why this second claim was filed. The Department currently views the two Matthews claims to be non-additive, or limited to no more than 0.06 cfs. Right 13-4283 is a decreed right with a May 12, 1885 priority date for 0.90 cfs for domestic, irrigation, and stock water for Blake S. Atkin Family Trust. The Atkins right was decreed in the private adjudication of *Peterson v. Richins* referenced in your letter. This adjudication case arose from a complaint between the two parties involving interference of a separate spring source (Dudley Spring) from ground water pumping. All of the rights owned by Peterson and Richins were included in the adjudication, including right 13-4248 from Anderson Spring which is now owned by Atkin.

There are two other water rights in our records associated with Anderson Spring, 13-525 for domestic and stock water use claimed by Peterson in *Peterson v. Richins*. This right was disallowed in the *Peterson v. Richins* adjudication. Statutory claim 13-4282 for domestic and stock water use from Anderson Spring, with a claimed priority of May 12, 1885, was claimed by

Peterson in 1984 but since this claim appears to be duplicative of the disallowed claim 13-525, it must be considered superseded by the *Peterson v. Richins* decree and thus should not be considered a valid claim or water right.

Your letter raised a few additional issues that the Department probably should address. One of the issues involves Mr. Atkin's refusal to allow access to the diversion works of Anderson Spring. Idaho Code § 42-1102 addresses easement and rights of way issues, but the Department does not have the authority or resources to pursue such issues. Therefore, any easement disputes between these two water right owners can only be addressed between the two parties or in a civil court.

Your letter also discussed the loss of water pressure in the system, but it fails to address the amount of water being delivered to Mr. Mathews. The Department can only address flow rates authorized by the water rights. Although the water pressure was reduced, we could find no measurement data or other information in your letter or the water right files to suggest that Mr. Mathews is not receiving all of the flow of water his water rights allow.

If you have any questions or concerns please contact me at the above address or call me directly at (208) 287-4959.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke", written over a horizontal line.

Tim Luke
Water Distribution Section

Cc: Dan Nelson, IDWR