

31 May 2008

Mr. Lyle Swank, Eastern Regional Manager

State of Idaho Department of Water Resources

900 N Skyline Drive, Suite A

Idaho Falls, Idaho 83402-1718

Dear Mr. Swank,

It appears that IDWR erroneously issued permit 13-7719 to David Danforth.

The point of diversion for 13-7719 is identical to the point of diversion for 13-7514. In brief history of this "spring", Cub River Acres was granted water right 13-7028 with priority date 03/27/1972. Cub River Acres was subsequently granted permit 13-7514 with priority date 12/22/1993, noting that "this right is diverted from the same spring as Right 13-7028 and when combined with Right 13-7028 shall not exceed a diversion rate of 0.20 cfs." It is upon permit 13-7514 and its development that several of us have depended for water for 15 or more years.

Cub River Acres has been unaware of the competing permits. As written, permit 13-7719 certainly could compromise permit 13-7514, in that 13-7719 allows diversion of up to 0.04 cfs, amounting to 20% of the combined allowed diversion of 0.20 cfs for 13-7028 and 13-7514. There are dozens of homes and sites which have relied for many years upon Cub River Acres for water.

Danforth's application was deficient and misleading in several ways:

1. It failed to identify the tributary as Litz Creek.
2. It failed to alert IDWR that the "spring" in the application is the "spring" in 13-7028 and was already highly developed with many users.
3. It failed to inform IDWR that he was applying for the same point of diversion as already existed under permit 13-7514, which collected seepage from 13-7028 and was highly developed with a spring box, PVC piping, two inline 1,000 gallon reservoirs, and several users.
4. It failed to acknowledge that the applicant was informed by his warranty deed that there was an easement on his property owned by Cub River Acres to access the existing spring box and buried PVC piping of 13-7514. He knew this easement led to his application's point of diversion.
5. It failed to inform IDWR that in their recorded Warranty Deed the Danforths are accorded 0.04 **cfm NOT cfs**. Thus, in the proof of ownership aspects of their application, Danforth et al. exaggerated (by a factor of 60) water intended for them at the time of sale of property.

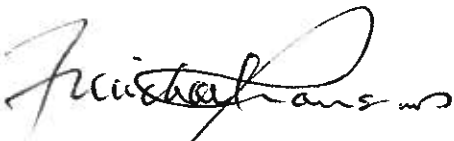
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We believe that if IDWR had had the opportunity to understand that this was not a new "spring," IDWR certainly would not have issued a permit in duplication and competition with 13-7514. We ask you to examine the facts presented and find that this is simply an unintentional mistake by IDWR.

13-7719 must not be allowed to continue. It threatens pre-existing water right 13-7028 and permit 13-7514 as well as downstream Cub River Irrigation water rights. We have reason to believe that Danforth and family intend to immediately destroy the improvements of 13-7514 or negatively impact its intended and historical collection. Further, it appears that Danforth intended to deceive IDWR in its application for 13-7719. Application maps do not properly identify the Danforth property or the location of pre-existing 13-7514 improvements on the Danforth property, nor do they identify that Cub River Acres actually owns the property surrounding the spring 13-7028. We request the Director of IDWR immediately issue an injunction pursuant to Idaho Code against any development of 13-7719 until the conflict is resolved. Please notify us immediately with what you propose as a remedy while we are still intact and undamaged. Thank you very much for your consideration.



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