



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-178

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.dwr.state.id.us

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EASTERN REGION

JAMES E. RISCH
Governor

KARL J. DREHER
Director

May 31, 2006

Margarete E. Tyler
Richard L. Tyler
796 Lee Creek Road
Leadore, ID 83464

CERTIFIED MAIL

Re: Water Right 74-1009 SRBA Review

Dear Sir or Madam:

Recently, our office conducted water right reviews of Snake River Basin Adjudication (SRBA) recommendations in your area. Of specific interest was a diversion dam/ditch at the head of what is known locally as Swanson Gulch. The location of the dam/ditch in question is in the NWNW of Section 1, T16N, R24E, B.M. For your convenience, I have included a map photo of the lands in question for the year 2004.

According to our data, you have a water right claimed and recommended in the SRBA to irrigate lands shown on the map encircled by the yellow line from two spring locations designated to the south of the irrigated areas (top of the map is north). However, it appears that there is a dam/ditch located west of this area that diverts water to the same irrigated areas. If this dam/ditch was constructed prior to November 19, 1987, a simple update to the SRBA claim would ordinarily be all that is required to reconcile this problem. However, two diversions downstream of this dam/ditch exist in the names of BLM and Morphey, which may be injured due to the location of this unclaimed diversion.

A site visit was conducted on Friday, May 26, 2006, to verify and determine potential options for reconciling this potential problem. The site visit revealed a ditch with a significantly sized berm placed across the drainage and just below some springs. No regulation device was present in the berm to allow any portion of water to bypass the ditch down to lower water right holders.

A review of the previous adjudication data from the Lemhi Decree was conducted to determine if the dam/ditch was present and if it were designated as another point of diversion. The results of this review do not show that the ditch was present on the Lemhi decree maps.

Our review of this dam/diversion also included the potential options for upgrading the water right to include the dam/ditch as an additional point of diversion under Idaho Code 42-222. The issue of injury, in this case, reflects directly upon the location of springs (or gains) that occur just upstream of the BLM and Morphey diversions. The

potential addition of a point of diversion down to the dam/ditch would capture water that the Tyler right (74-1009) would never have been able to use upstream at the current points of diversion and would likely injure the two junior water right holders who depend upon them. Therefore, if it was attempted to add this location as a point of diversion, it may be difficult to do so without objection or protests from the junior appropriators or others.

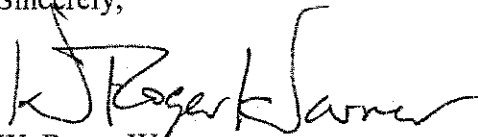
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Based upon this review, it appears that you may be diverting water decreed to at least two downstream water right holders, Namely, BLM and Morphey (water rights 74-12752 and 74-2330, respectively). It also appears that a portion of the diversion works may have been constructed upon BLM lands. In order to fix this problem, we request you to do one of the following:

- Petition the SRBA Court in order to amend your water right claim to include the dam/ditch as an additional recognized point of diversion and install a regulation device in the diversion.
- File a transfer of water right with IDWR to add the new point of diversion and install a regulation device in the diversion.
- Remove the dam/ditch sufficiently to allow ordinary water flows to lower water right holders.

Should you have any questions or wish to discuss or explain the matter, please feel free to call me at (208) 525-7161. Otherwise, we expect a choice to be selected and acted upon by June 21, 2006.

Sincerely,

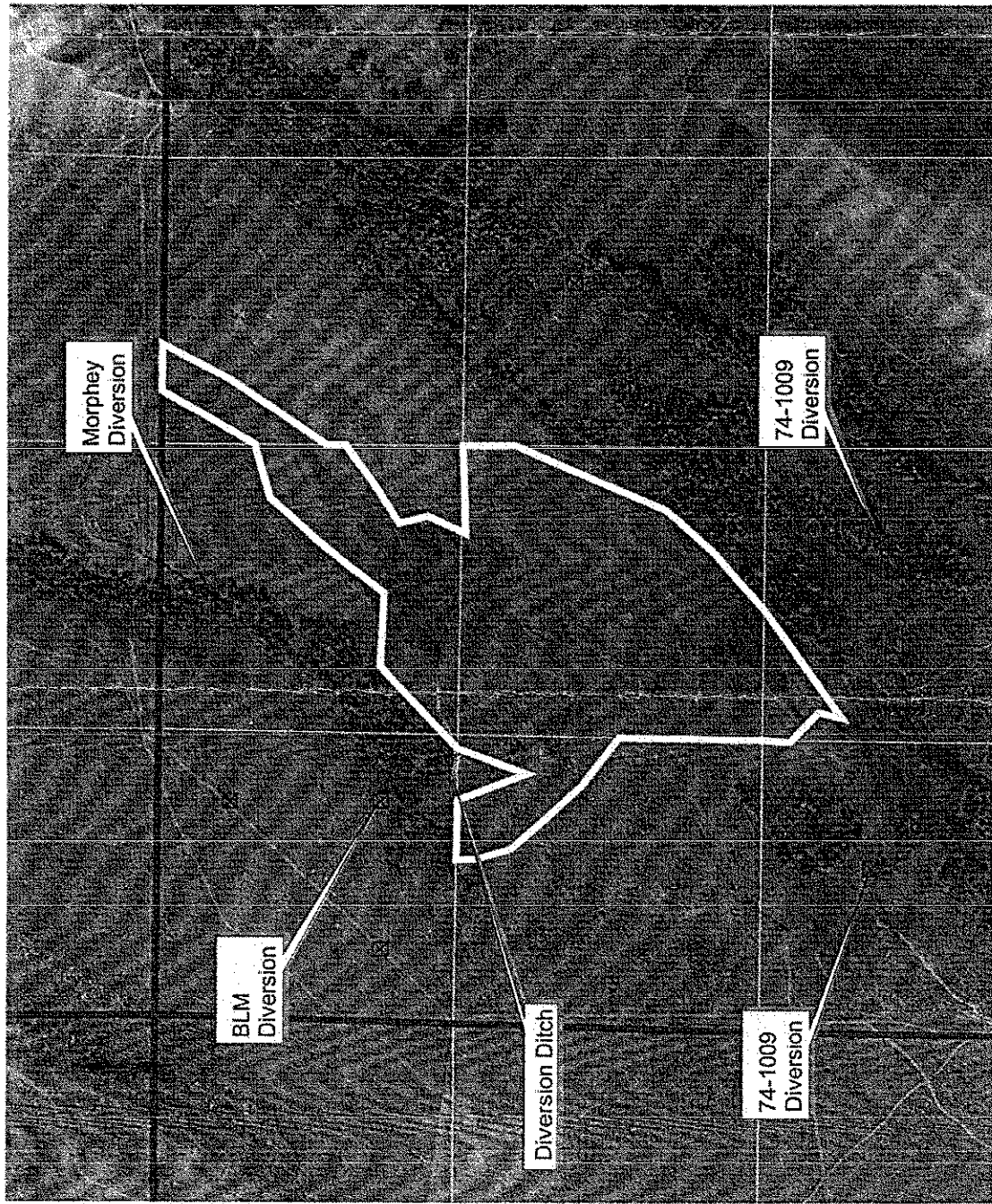


W. Roger Warner
Water Rights Supervisor – Eastern Region

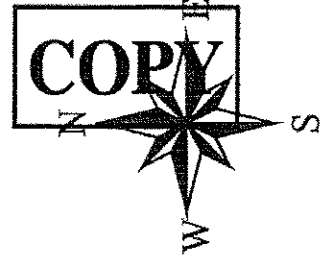
Enclosure: Aerial photo of area dated 2004,
Proof Report for water right 74-1009.

Cc: Roxanne Brown, IDWR – Boise,
Bob Foster, IDWR – Salmon,
Allen Bittner, BLM – Salmon,
Gerald Morphey, Salmon,
Michael Zaharias, Watermaster, Water District 74Q, P.O. Box 61, Lemhi ID,
83465-0061

74-1009



74-1009.shp
Recommendation POD
Sections
QQ



0.6 Miles

0.3

0

0.3

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 74-1009 V1

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WATER RIGHT NUMBER: 74-1009 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARGARETE E TYLER 796 LEE CREEK RD LEADORE, ID 83464 (208)768-2401
Current Owner	RICHARD L TYLER 796 LEE CREEK RD LEADORE, ID 83464 (208)768-2401

Priority Date: 06/19/1913

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRINGS	MILL CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15	11/15	1 000 CFS	
	<u>Total Diversion:</u>		1 000 CFS	

Location of Point(s) of Diversion

SPRINGS	NW1/4SW1/4	Sec 1, Twp 16N, Rge 24E, B.M.
LEMHI County		
SPRINGS	NE1/4SW1/4	Sec 1, Twp 16N, Rge 24E, B.M.
LEMHI County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N	24E	1		3.0			11.0		5.0	32.0	2.0								53.0
				L 2				L 3											

Total Acres: 53

Conditions of Approval:

1. E64 This right authorizes the irrigation of 53.1 total acres.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.