



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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April 27, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

JOHN R AND PATRICIA W CHALLIS
CHALLIS CREEK RANCH
PO BOX 1220
CHALLIS ID 83226-1220

Re: Illegal Storage Pond

Dear Mr. and Mrs. Challis:

In 2006, you constructed a pond on your property. The pond currently stores surface water and ground water. Following construction of the pond, you filed an application to appropriate water with the Idaho Department of Water Resources (the Department) to authorize storage of water in the pond. The application seeks a water right to store 1.0 acre-foot for aesthetic purposes and 1.0 acre-foot for recreation purposes, but both uses combined will not exceed 1.0 acre-foot. The Department assigned water right no. 72-16686 to the application. The application has not been approved.

You hold several natural flow irrigation water rights. You may place the flow rate authorized by these water rights into your reservoir and store the water in the reservoir up to the volume that would accrue for a 24 hour period. The limited storage of a natural flow water right allows you to store the natural flow for a concentrated irrigation application for a period of time shorter than 24 hours. Storage and withdrawal of the natural flow should occur within an approximate 24 hour time period.

In addition, you may recapture wastewater into the pond that is discharging from irrigation of your own fields. The recaptured wastewater must be reapplied on the lands to which the water right authorizing the use of the original natural flow is appurtenant. The 24 hour storage rule described above also applies to the storage of wastewater.

The Department estimates your pond is about 1/3-acre in size and approximately 6-8 feet deep. The pond was constructed by excavation at a low point on your property. The excavation intercepts groundwater and collects water from one or more nearby springs.

You currently have no valid water right to store or otherwise beneficially use water in excess of the quantities described above or from sources of water not described above. This would include storage of ground water or surface water derived from springs or other sources of water. As a result, you are storing groundwater and spring water without a valid right to do so.

Storage and use of water without a water right is an illegal diversion and use of water under Idaho Code § 42-351. Section 42-351 authorizes the Department to issue notices of violation and cease and desist orders for an illegal diversion and use of water. Idaho Code

§ 42-1701B authorizes the Department to commence civil enforcement actions, which include a monetary penalty, for these violations. In addition, waters you are storing and using are within the boundaries of Water District 72A, and are regulated by a watermaster. This letter outlines actions you must take to avoid enforcement activities, associated monetary penalties, and curtailment of use of water.

The Department has the authority to require you to remove or alter the ponds until you obtain a water right permit. However, the Department feels that such an approach would be unduly burdensome relative to the impact on the resource, given the remaining time frame for approval or denial of the pending applications and the minimal impact your pond has on existing water rights. Instead, the Department feels that, pending issuance or denial of a permit for your pond, compliance should focus on limiting the beneficial uses of the stored water to the extent practicable. Alternatively, you may elect to breach and/or backfill the pond until a permit or water right authorizing the storage is secured.

You must refrain from beneficially using any water stored during the irrigation season beyond that legally stored in conjunction with existing irrigation rights and wastewater recapture. To insure compliance, you must adhere to the following:

1. You must not beneficially use stored water while it is in the pond. Beneficial uses within the pond include stocking with fish, recreation, aesthetics, etc.
2. Pursuant to Idaho Code § 42-701, **on or before May 25, 2007, you must: (a) install a measuring device or other means of measurement approved by the Department that will accurately measure the flow from your redirection pump; (b) install a locking control valve or other locking controlling mechanism at the redirection pump; and (c) install/maintain measuring devices for inflow from wastewater or water delivered to storage pursuant to natural flow rights.**
3. Pumping from your well cannot exceed the rate of surface water inflow to your reservoir from a combination of wastewater and flow diverted under other water rights. Alternatively, you may balance the daily volume of water pumped with the combined daily volume of wastewater and water delivered to the pond from natural flow water rights. You must maintain records of the daily accounting of inflow and outflow, and must submit them to the Department upon request.
4. At the end of the irrigation season (October 15, 2007), unless the Department has approved permit No. 72-16686, you must lower the level of water in the pond to the natural ground surface. This would include breaching any berms surrounding the pond.

You are the watermaster for Water District no. 72-A. This responsibility places an extra burden upon you that you divert and use water within the confines of the law. **If the necessary measuring device and controlling works are not installed by May 25, 2007, please cease all deliveries of water from your pond for beneficial uses and allow the water to free flow away from the pond. Any departure from this instruction will result in swift enforcement action by the Department.**

Mr. and Mrs. Challis
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Non-compliance with the above may also result in monetary civil penalties of up to \$50,000, pursuant to Section 42-1701B, Idaho Code.

Please contact IDWR if you have any questions or comments.

Respectfully,

A handwritten signature in cursive script, appearing to read "Gary Spackman".

Gary Spackman
Administrator, Water Management Division

Enclosure: Idaho Code § 42-701

cc. Robin Wegener
Gary Chamberlain
Norm Semanko
Bob Foster
Southern Region
Nick Miller