



CHALLIS CREEK RANCH, LLC

RandRforHorses.com

January 30, 2006

Robin J. Wegner & Gary Thor
HC 63 Box 1576
Challis, ID 83226

RECEIVED

FEB 01 2006

Department of Water Resources
Southern Region

Dear Robin & Gary:

Contrary to advice of Counsel I have decided to write you regarding the pond recently excavated on your property. It is our sincere hope that an amicable solution can be found before this becomes a very, very expensive legal confrontation that we hope you too would like to avoid.

It is now confirmed by IDWR that the excavation you contracted with Tupper Construction earlier this month will unquestionably require a pond permit/water right. This is necessitated, at least in part, by the now obvious influx of ground water on all sides as well as the natural flow and subbing from our spring, 72-16651, which began simultaneous with your excavation and continues at this writing (if now only by subbing because of frozen ground and/or the berm you had Tupper Construction construct along the west entry pond edge following Mr. Robert E. Foster's letter of January 10, 2006). The maximum size of the excavation is, of course, by statute limited to 24 Hour Second Feet of those water rights that can and will supply the pond. It thus can only be assumed by the current size it is your intent to attempt to justify same by combining your water rights 72-00007A (0.15 cfs), 72-16560 (1.0 cfs) and 72-00032 (.04 cfs) with 72-16559 (0.06 cfs) and this new pond permit/right to achieve appropriate size compliance. However, we both know the only realistic, logical and/or economical means to supply this pond (other than ground water) is, of course, our spring (72-16561).

While it is not the responsibility of IDWR to concern themselves (much less enforce) with our Water Rights Agreement of May 15, 2001 (Custer County Registration No. 0222723 of the same date), as it might pertain to this matter, it is undoubtedly your responsibility. Therefore we feel it best you be aware of the consequences of your actions should you chose to continue your present course. Perhaps more importantly taking you at your word as stated in your January 11th letter to IDWR, "We sincerely wish to make the best use of our property.", we are confident retrospect scrutiny of your actions in this regard will confirm this is not your best choice.

CHALLIS CREEK ROAD - P. O. BOX 1220 - CHALLIS, IDAHO 83226-1220
PHONE: (208) 879-4617 - FAX: (208) 879- 5238 - Outside Idaho Toll Free: 1-866-CCR4RnR (227-4767)
E-MAIL: Jack@RandRforHorses.com or Trish@RandRforHorses.com

Our Agreement clearly limits your use of the flow from our spring (72-16651) solely to your water right 72-16559. There is no question this mutually agreed settlement was to insure a proportional share of this flow distributed in accordance with the Agreement provision while making every effort not to dry up the spring, an issue that has in the past manifested itself in more serious and usually consecutive drought years. This is further confirmed in the specific Agreement prohibition of your pumping from this spring flow. The addition of a new permit/right for this new pond with the obvious objective to blatantly circumvent the purpose and writing of this provision becomes rather obvious.

This intent becomes even more transparent when one realistically considers the near impossibility of feeding this pond with flow from 72-00007A, 72-16560 and/or 72-00032. For starters 72-00007A has not been released since 1997 (and then it soaked into the ground and/or evaporated before it reached our house; less than halfway to your property line). Rights 72-16560 and 72-00032 (both 1911 "high water" rights which historically would not be released much past the end of June anyway due to priority) have never been delivered to your property since Adjudication confirmation in 2001. Even:

- **IF** you were to comply with the conditions of our Agreement and spend the thousands of dollars it will cost you clearing and reconstructing the historical ditch across the entire length of our property to carry any or all of these flows; and
- **IF** you could get any or all of these flows to reach your property (over a mile away) via that open ditch before they soaked into the ground and/or evaporated; and
- **IF** this could be done without any ditch leakage/seepage (which historically has occurred in multiple locations and, if reoccurs, gives us the right by Agreement to terminate all flows);
- **THEN** delivery of such must, again by Agreement, be via the southern most ditch across our east pasture to your property line well in excess of 100 yards downgrade from your new pond.

As the foregoing clearly exemplifies, your continued pursuit of a new permit/right for this pond as it currently exists would leave us no alternative but to not only file an Objection with IDWR to such application but simultaneously file a civil action for Breach of Agreement. This would undoubtedly result in an extensive delay in addition to the very long, drawn out and, most importantly, very expensive legal battle mentioned prior. Again, this not being our desire, and we hope not yours as well, let us consider some alternatives.

It apparently has been suggested that the flows from Bear Creek across our property (again, over a mile in length) might be contained in a pipe installed under what would be the historical ditch location (your only location option). One would have to question the sheer logic of such an installation, much less your necessary initial expenditure or ongoing maintenance costs, since transfer of those rights to your Eddie Creek diversion and then piped from there to your entire property (not just the three acres presently served from that diversion) would involve a fraction of pipe length and resulting installation cost for such alternative. Of no less importance this alternative could be coupled with a system split to serve you as well as the Sidlos allowing total elimination of one of your two diversions and the need for a second fish screen.

As I think you know Idaho Fish & Game (IF&G) had initially favorably considered the suggestion to place a large pipeline along the toe of the hill from Diversion A0002586 on the Burchill property eastward across the Van Kampen property, the southern portion of the Axline property, the Stanley property and, of course, onto the southern portion of our property. This single line could then serve as a means of gravity pressurized flow to all these individual sprinkler systems (or discharged anywhere on these respective properties enabling continued ditch flooding if anyone so desired). This system not only provided all involved with the far, FAR more effective and efficient delivery of their rights but allowed the total elimination of at least seven (7) other diversions, annual maintenance of each and subsequently the cost of installing and maintaining fish screens at these diversions. The advantages and significant reductions in environmental impact are clearly obvious.

However, one of those diversions, A0002588, the one of single greatest concern to IF&G due to the three (3) foot plus dam which all but eliminates the possibility of fish being able to travel any further up Bear Creek (and the one from which you could divert were you to meet all the previously outlined criteria), you apparently would not agree to abandon. As a result IF&G has "scrubbed" the idea and this option is currently "off the table".

Many including us feel the obvious choice that would most benefit all concerned, be of least cost and, not of any lesser importance, vastly improve or minimize environmental impact, would be the combination of all your and the Sidlo rights from Eddie Creek into a single pipeline and the consolidation of Van Kampen, Axline, Stanley and our rights into a single pipeline from Diversion A0002586. However, perhaps you have a better idea. I know we, and I am confident your affected neighbors, would welcome any reasonable alternative.

In any case we would hope you know by now litigation in the final analysis only benefits those with "Attorney At Law" behind their name. The choice, however, is yours.

Sincerely,
Challis Creek Ranch, LLC

J. R. Challis

cc: Allen Merritt – IDWR, Southern Region
Robert E. Foster – IDWR, Salmon Office (via email attachment)
Tim Luke – IDWR, Boise (via email attachment)
Scott E. Axline
Larry G. & Judy A. Sidlo
David W. J. Stanley, D.V.M.
Thomas J. & Leslie I. Van Kampen
Norman M. Semanko, Attorney At Law (via email attachment)

WATER RIGHTS AGREEMENT

THIS AGREEMENT is entered into between J. R. CHALLIS and PATRICIA W. CHALLIS, husband and wife, residing in Challis, Idaho, hereinafter referred to as "Challis", and ROBIN J. WEGNER, a single woman, residing in Challis, Idaho, hereinafter referred to as "Wegner".

WHEREAS, Challis and Wegner have been engaged in litigation in the Snake River Basin Adjudication (SRBA) regarding their respective water right claims from Bear Creek and two springs located on the Challis property; and

WHEREAS, Wegner may desire to use a ditch located on the Challis property to facilitate the delivery of water to her property, which has been used to convey water to the Wegner property in the past; and

WHEREAS, Wegner is willing to clear, maintain and clean and put and keep said ditch in good repair at her sole expense except as otherwise stipulated herein; and

WHEREAS, the parties desire to prevent any flooding of the Challis property; and

WHEREAS, the parties are agreeable to certain changes to the Wegner ditch; and

WHEREAS, the parties desire to facilitate the use of water from the boundary/east pasture spring located on the Challis property; and

WHEREAS, Wegner is considering changing the points of diversion for water rights 72-00007A, 72-16560 and 72-10032 to a point on Challis Creek, and/or piping water all or in part; and

WHEREAS, the parties desire to settle this matter upon mutually agreeable terms.

NOW, THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Water Right Descriptions. The water right claims in dispute should be decreed as listed below. The parties agree to sign and file a Standard Form 5 (Stipulated Elements of a Water Right) with the SRBA Court for each of the water right claims, with the elements as they are listed below.

0222723
Custer County Reg. of.
Jack & Patricia Challis
Time 1:40 P.M. Dec 5/15 2001
Ethel M. Peck, Clerk
Janet Mangis 33⁰⁰
Deputy

- a. Right Number: 72-10032
 Name & Address: Robin J. Wegner
 HC 63 Box 1576
 Challis, ID 83226
 Source: Spring Tributary: Sinks
 Quantity: .04 cfs
 Priority Date: 10/10/1911
 Point of Diversion: T14N R18E S03 SESWNE Custer County
 Purpose and
 Period of Use: Irrigation 4-1 to 10-31 .04 cfs
 Place of Use: Irrigation T14 R18E S02 SWNW
 12 acres
- b. Right Number: 72-16559
 Name & Address: Robin J. Wegner
 HC 63 Box 1576
 Challis, ID 83226
 Source: Unnamed Stream Tributary: Sinks
 Quantity: .06 cfs
 Priority Date: 10/10/1911
 Point of Diversion: T14N R18E S02 NWSWNW Custer County
 Purpose and
 Period of Use: Irrigation 4-1 to 10-31 .06 cfs
 Stockwater 1-1 to 12-31 .02 cfs
 Place of Use: Irrigation T14N R18E S02 SWNW
 12 acres
 Stockwater T14N R18E S02 SWNW
- c. Right Number: 72-16560
 Name & Address: Robin J. Wegner
 HC 63 Box 1576
 Challis, ID 83226
 Source: Bear Creek Tributary: Challis Creek
 Quantity: 1.00 cfs
 Priority Date: 10/10/1911
 Point of Diversion: T14N R18E S03 NESWNW Custer County
 Purpose and
 Period of Use: Irrigation 4-1 to 10-31 1.0 cfs
 Place of Use: Irrigation T14N R18E S02 SWNW
 12 acres
- d. Right Number: 72-16561
 Name & Address: J R Challis
 Patricia Challis
 P.O. Box 1220
 Challis, ID 83226-1220
 Source: Spring Tributary: Sinks
 Quantity: .02 cfs
 Priority Date: 10/10/1911

Point of Diversion: T14N R18E S03 NESENE Custer County
Purpose and
Period of Use: Stockwater 1-1 to 12-31 .02 cfs
Place of Use: Stockwater T14N R18E S03 SENE

The parties understand and acknowledge that any decree for the above-listed water rights is contingent upon consent to the Standard Form 5's by the Idaho Department of Water Resources (IDWR), issuance of recommended partial decrees by the SRBA Special Master, and issuance of partial and final decrees by the SRBA Court. The parties agree that any failure by IDWR or the SRBA Court to recommend or decree the water rights consistent with the elements set forth above shall not negate or otherwise affect this agreement and that all provisions of this agreement shall remain in full force and effect upon execution by the parties hereto.

In addition, the following water rights have already been decreed by the SRBA Court: 72-00007A (Wegner), 72-10033 (Wegner), 72-00007C (Challis), 72-10368 (Challis), 72-16562 (Challis), 72-16563 (Challis), 72-16564 (Challis) and 72-16565 (Challis).

2. Bear Creek Diversion; Maintenance and Cleaning of Wegner Ditch. Water from Bear Creek may be diverted for use by Challis under water right nos. 72-00007C and 72-10368 and Challis will retain the right to divert from Bear Creek; provided that Challis shall be responsible for a proportionate share of the maintenance costs of the diversion structure and measuring device from Bear Creek only for those periods, if any, that Challis actually diverts water from Bear Creek. Wegner shall have a right to divert water from Bear Creek under water right nos. 72-00007A and 72-16560, consistent with this agreement. The parties agree to pay their proportionate share of the costs for the licensed contractor that shall be hired to do any such maintenance work within thirty (30) days of receiving a copy of the contractor's bill or invoice from the party contracting said work. Proportionate shares shall be determined by water usage during the prior irrigation season, as established by applicable IDWR usage records. The parties acknowledge and agree that the ditch which carries water from Bear Creek to the Wegner property needs repair, beginning at the point at which the diversion ditch from Bear Creek splits in Challis' west pasture and continuing on to the Wegner property ("the Wegner ditch"), and is in need of clearing and cleaning. While in no way limiting Wegner's responsibility for clearing, maintaining, and cleaning the full length of the Wegner ditch, in particular, the parties have been advised and understand that there is a boggy area west of the Challis house which is a high seepage area and has a low bank on the downstream side of the ditch. Wegner agrees to perform the clearing, ditch maintenance and cleaning that is necessary to put the full length of the Wegner ditch into good repair and to prevent flooding from the ditch onto the Challis

property, including lining the ditch and/or building up the banks, and/or to place the ditch into an adequately sized pipe. Water shall not be diverted into the ditch for conveyance and use by Wegner (under water rights nos. 72-00007A and/or 72-16560) until such work is completed. All said work shall be performed by a licensed contractor with equipment adequate to achieve the required result. Wegner agrees to provide reasonable notice to Challis before the commencement of any work. The parties agree to cooperate with one another on the scope and nature of any work.

3. Access to Wegner Ditch. Challis acknowledges and agrees that Wegner has an easement for the Wegner ditch, clearing, maintenance, cleaning and repair of the ditch, and for reasonable access to the ditch for said purposes, subject to this agreement and the applicable provisions of Idaho law. However, the size and scope of the ditch easement shall not be enlarged beyond the size reasonably necessary to convey the Wegner rights, as a result of this agreement, nor shall the burden on the Challis property be increased. Challis shall continue to have a right to use the Wegner ditch for purposes of irrigating the Challis property; provided that Challis shall only be required to pay a proportionate share of maintenance of the ditch for those periods, if any, that Challis actually uses the Wegner ditch. The parties agree to pay their proportionate share of the costs for the licensed contractor that shall be hired to do any such maintenance work within thirty (30) days of receiving a copy of the contractor's bill or invoice from the party contracting said work. Proportionate share shall be determined by water usage during the prior irrigation season, as established by applicable IDWR usage records.

4. Prevention of Flooding from Wegner Ditch. It is not in the best interest of either party for flooding to occur from failure or overflow of the Wegner ditch. As a result, Wegner agrees that no water will be diverted into the ditch until the ditch clearing, maintenance and cleaning, or piping, which is necessary to prevent flooding on the Challis property is performed. In the event that flooding does occur, Wegner agrees to immediately upon notification or other information, cease the flow of water into the Wegner ditch or pipe from Bear Creek until the problem(s) is (are) corrected. If Wegner is not immediately available to discontinue the flow of water into the ditch or pipe, or otherwise fails to do so, Challis shall have the right to cause the flow of water to be discontinued so as to prevent further damage to the Challis property. Upon correction of any flooding problem(s), water will again be allowed to flow into the ditch or pipe. Nothing herein shall limit the respective rights or obligations of either party in the event that legal action is commenced arising out of any flooding that may or is alleged to occur in the future.

5. Installation of Measuring Device. Wegner agrees to pay the cost of providing, installing and maintaining a measuring device of a type approved by and in accordance with installation requirements of IDWR, near the point at which the diversion ditch splits in the Challis west pasture, prior to the diversion of any water into the Wegner ditch, so that water can be properly allocated between the parties, pursuant to their respective water rights. Future maintenance on the flow control gate currently installed and controlling flow into the Wegner ditch shall be Wegner's sole responsibility.

6. Relocation of Portion of Wegner Ditch. The parties agree that a portion of the Wegner ditch which lies upstream and adjacent to what is commonly referred to as "the middle spring", located on Challis' property in T14N, R18E, S03, SESWNE, and which serves as the source for water right nos. 72-10032 (Wegner) and 72-16563 (Challis), will be relocated to its original location at the toe of the old county road, now the Challis driveway, to the north of the current ditch location. Challis agrees to provide and install the pipe and perform the work necessary to carry flow under the road that Challis has had constructed at the middle spring. Challis will also install a mechanism to split any middle spring flow evenly between the parties and a pipe from said split to the relocated Wegner ditch.

7. Selection of East Pasture Ditch by Wegner. Within sixty (60) days of signing this agreement, Wegner agrees to select a location for that portion of the Wegner ditch which runs through the Challis east pasture, immediately to the west of the Wegner property. As identified by the parties, there are three ditches that may have been used in the past and Wegner agrees to select one of these three. If Wegner does not choose one of these three ditches within 60 days, Wegner will then have the right to use the southern-most ditch, located nearest to Challis Creek as had been her choice prior to this agreement. Upon expiration of the 60-day period, Challis shall then have the right to fill-in the remaining ditches and Wegner shall have no future right to utilize any ditch other than the aforementioned.

8. Transfer of Points of Diversion. It is understood that Wegner is considering the possibility of seeking to transfer the points of diversion for water right nos. 72-00007A, 72-16560, and 72-10032 to a point on Challis Creek. Challis agrees to cooperate with Wegner on said transfer, subject to further agreement as to the location of any new system on or across the Challis property; provided that the parties understand and acknowledge that Challis has not consented, and does not in any way herein consent, to the diversion of water across their property from Challis Creek. In the event that Wegner seeks to transfer the points of diversion for all three of the above-mentioned water rights to Challis Creek at a location on the Wegner property, Challis agrees to convey water right no. 72-16563 to

Wegner by quit claim deed after the successful completion of the transfer process with IDWR. If such transfer is not approved, Challis shall retain all title and interest to water right no. 72-16563. Should successful completion of the transfer occur, Wegner shall have no further right to use or access Bear Creek or the middle spring and agrees to abandon all portions of the Wegner ditch and any other ditches located on the Challis property, to remove any pipe that may have been constructed on the Challis property under this agreement, and relinquish any easement whatsoever on the Challis property. The costs of the transfer process shall be Wegner's sole responsibility.

9. Use of Boundary/East Pasture Spring. It is acknowledged and agreed that Challis has a right to use stockwater from the spring located in the Challis east pasture, which is commonly referred to as "the boundary spring" or "east pasture spring", pursuant to water right no. 72-16561, as described in paragraph no. 1 above. In addition, Wegner has a right to use water for irrigation and stockwater purposes, from the point at which spring water from the Challis property enters upon the Wegner property as an unnamed stream, pursuant to water right no. 72-16559, as described in paragraph no. 1 above. To facilitate the natural flow of water to the Wegner property, the parties agree that Challis shall return the spring to its original condition by filling in the ditch that was constructed during 2000 to facilitate the building of a fence on the property line between the Challis and Wegner properties. All work done pursuant to this paragraph no. 9 will be done consistent with the advice, recommendations, and directions received from Brockway Engineering during the parties' conference call with Brockway Engineering on April 12, 2001, in order to prevent disruption or diminishment of the spring flows to Wegner. Upon said return of the spring to its original condition, the parties agree to jointly observe the flow from the spring to determine the location of the discharge orifice and resulting natural flow toward the Wegner property. Challis will leave an undisturbed strip of land approximately four (4) feet wide, located between said spring orifice and the Wegner property, so as to allow the natural flow of water to the Wegner property, and may thereafter build up the sides of said strip of land in a manner that does not impede the natural flow of water from the spring. Challis shall have continued and unrestricted access to the spring and natural flow of water within the four foot (4') strip of land for stockwater purposes, pursuant to water right no. 72-16561. Only once the natural flow of water enters Wegner's property, shall Wegner have the right to use it, pursuant to water right no. 72-16559. Wegner shall be entitled to use the water that flows naturally onto the property, but will not pump the water so as to deprive Challis of water needed for his stock under water right no. 72-16561.

10. High Water Claim by Challis. It is understood that Challis intends to file an additional or amended claim for high water from Bear Creek and Challis Creek to increase the quantity of high water that may be diverted, consistent with IDWR guidelines. All other elements are to be consistent with water right no. 72-10368. Wegner agrees not to oppose any late or amended claim by Challis, or to object to any recommendation by IDWR in the SRBA, or to otherwise challenge or participate in such high water claim made by Challis.

11. Notice and Cooperation. The parties agree to make reasonable efforts to communicate with one another about their respective water diversion and use activities, including any plans for changes in their systems, and to cooperate to the extent possible on any such changes.

12. Mutual Release. The parties agree to release one another from any potential cause of action accruing prior to the date of this agreement and agree further not to file any lawsuit arising from the subject matter of this dispute as it pertains to any acts or omissions which occurred prior to the date of this agreement. This provision in no way limits the rights of the parties to seek enforcement of this agreement in the future.

13. Entire Agreement. This agreement is the entire agreement between the parties as to the settlement of the rights in dispute and the other covenants and obligations set forth in it. It, however, does not limit the remedies available to either party in law or equity.

14. Binding Nature. This agreement shall constitute a covenant which runs with the Wegner and Challis properties and shall be binding upon the parties and their heirs, successors and assigns, as well as their agents, employees, or anyone else acting on their behalf. Upon execution, the parties shall cause a copy of this agreement to be recorded with Custer County, the cost of which shall be borne evenly by both parties.

15. Attorney Fees. In the event that either party is required to enforce the terms of this agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

16. Counterparts. This agreement may be executed in counterparts.

DATED THIS 15th day of May, 2001.



J. R. CHALLIS



PATRICIA W. CHALLIS



ROBIN J. WEGNER

STATE OF IDAHO)

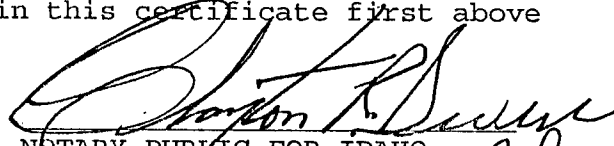
) ss.

County of Custer)

On the 15th day of May, 2001, before me, a Notary Public, in and for said County and State, personally appeared J. R. CHALLIS, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

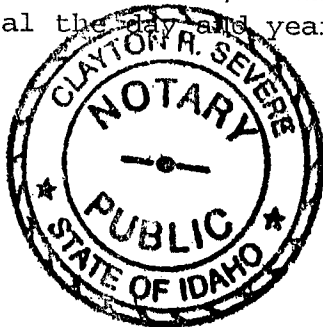



NOTARY PUBLIC FOR IDAHO
Residing at: Challis, Id.
My commission expires: 3-16-2003

STATE OF IDAHO)
) ss.
County of CUSTER)

On the 15th day of May, 2001, before me, a Notary Public, in and for said County and State, personally appeared PATRICIA W. CHALLIS, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

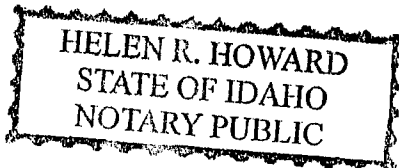


Clayton R. Severe
NOTARY PUBLIC FOR IDAHO
Residing at: Challis, Id.
My commission expires: 3-16-2003

STATE OF IDAHO)
) ss.
County of CUSTER)

On the 4th day of May, 2001, before me, a Notary Public, in and for said County and State, personally appeared ROBIN J. WEGNER, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Helen R. Howard
NOTARY PUBLIC FOR IDAHO
Residing at: Challis
My commission expires: 3/20/04