



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

May 14, 2009

Troy Foster
Water District 13-A Watermaster
2063 E 1600 S
Preston, ID 83263

Re: Guidance for Delivery of Water on Spring Creek, tributary to Worm Creek

Dear Troy,

On July 18, 2008, Ernie Carlsen and I visited you and toured certain areas of the Cub River water district, including Spring Creek, which is tributary to Worm Creek. During our visit, I instructed you to prohibit Preston Whitney Irrigation Company and/or Preston Whitney Reservoir Company (collectively referred to herein as Preston Whitney) from using Spring Creek to deliver any portion of their water or water rights to Preston Whitney shareholders or any other users on Spring Creek. This guidance was reiterated in a letter from the Idaho Department of Water Resources (Department) to Eldon Golightly, dated August 28, 2008. A copy of that letter was sent to you and Preston Whitney. Since sending that letter, the Department has engaged in several discussions with Preston Whitney and Gilbert Hull regarding Preston Whitney's use of Spring Creek as a conveyance channel for delivery of stored water to Mr. Hull.

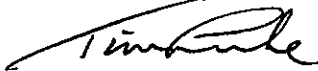
On May 5, 2009, Department representatives met with Preston Whitney representatives to further discuss options for using Spring Creek as a conveyance channel for delivery of stored water. This meeting was preceded by several discussions between Mr. Hull, Ernie Carlsen and I. During the meeting with Preston Whitney on May 5th, the Department suggested that Preston Whitney consider filing a water right transfer that would add to their water rights a point of injection and point of re-diversion to and from Spring Creek. The Department also suggested that if Preston Whitney continues to deliver stored water to Spring Creek without updating their water rights to add a point of injection to and point of re-diversion from Spring Creek, then the Department would consider any water entering Spring Creek as waste or return water that is subject to appropriation in accordance with Spring Creek priority water rights. It is the Department's understanding based on our May 5th meeting that Preston Whitney will not immediately add to its' water rights a point of injection to and point of re-diversion from Spring Creek. Until or unless the Department approves a water right transfer that authorizes the use of Spring Creek as a conveyance channel for the delivery of stored water, the Department directs you as follows:

- Any or all water that enters Spring Creek as a result of Preston Whitney delivering or discharging water from its' conveyance systems to the creek channel shall be considered as operational spill, waste water or return flow water. Any such water that enters Spring Creek shall then become the natural flow of Spring Creek and subject to appropriation by the holders of water rights from Spring Creek.

- The Department directs you, as watermaster of Water District 13-A, to deliver water rights on Spring Creek in accordance with the priority dates for those rights. A list of the Spring Creek water rights is attached to this letter along with computer generated summary reports for each right. Any Spring Creek rights that are senior to the right held by Mr. Hull must first be satisfied, assuming that water is available at the points of diversion for those rights and the right holders wish to have those rights delivered.
- As shown on the attached water rights list, Mr. Gilbert Hull is shown as one of three owners of right 13-311 bearing a priority date of February 2, 1893, and a diversion rate of 1.34 cfs for irrigation and stockwater purposes. The attached summary report for this right also shows that no more than 235 acre-feet per year can be diverted for irrigation purposes. This right may be delivered for the irrigation rate of diversion of 1.34 cfs on 67 acres, which equals 0.02 cfs per acre or one inch per acre. In delivering this right, you must assure that the rate of diversion does not exceed the authorized water right diversion rates. The right must be curtailed if and when the 235-acre limit is reached.
- Any water in Spring Creek that may be available for appropriation above and beyond Hull's water right shall be delivered to the next-in-time priority right holder on Spring Creek who requests or seeks delivery of water under their priority right. The Department asks that you communicate with any other users on Spring Creek regarding their interest or ability to divert any additional water that may be available in the creek.
- Mr. Hull must install a measuring device on his diversion from Spring Creek so that you can measure and control the proper delivery of water to him under his right. Separate correspondence will be sent to Mr. Hull requiring him to install a measuring device.
- The Department further directs you to curtail the diversion or use of any water from Spring Creek that is not authorized and/or described in the attached list of water rights.

If you have questions concerning this matter, please contact me or Dan Nelson, IDWR Water Distribution Section, Boise (208-287-4800).

Respectfully,



Tim Luke
Water Distribution Section Manager

Cc: Gilbert Hull
Ernie Carlsen, IDWR Eastern Region
Dan Nelson, IDWR State Office
Lyle Porter, Preston Whitney Irrigation Co.
Rob Harris, Attorney for Preston Whitney Irrigation Co.
Preston Whitney Reservoir Co.

Water Rights from Spring Creek
Sorted by Priority

5/14/2009
IDWR

<u>Water Rt No</u>	<u>Basis</u>	<u>Source</u>	<u>Tributary</u>	<u>Priority Date</u>	<u>Owner(s)</u>	<u>Twp</u>	<u>Rnge</u>	<u>Sec</u>	<u>QQQ</u>	<u>Gvt Lot</u>	<u>Rate (cfs)</u>	<u>Vol (af)</u>	<u>Acres</u>	<u>Water Use(s)</u>
13-247	Decreed	SPRING CREEK	CUB RIVER	1878/04/01	BAKER, ILA L (Current)	15S	40E	30	NWSW	3	0.28	52	14	IRRIGATION, STOCKWATER
13-247	Decreed	SPRING CREEK	CUB RIVER	1878/04/01	BAKER, ILA L (Current)	15S	39E	25	NESE		0.28	52	14	IRRIGATION, STOCKWATER
13-60A	Decreed	SPRING CREEK	CUB RIVER	1886/05/15	RALLISON, FREDRICK W (Current)	16S	40E	6	NWNW	4	0.02	9	22	IRRIGATION
13-60B	Decreed	SPRING CREEK	CUB RIVER	1886/05/15	SHARP, LYMAN J (Current)	16S	39E	1	SWSE		0.08	34	216	IRRIGATION
13-61A	Decreed	SPRING CREEK	CUB RIVER	1888/05/15	RALLISON, FREDRICK W (Current)	16S	40E	6	NWNW	4	0.03	13	22	IRRIGATION
13-61B	Decreed	SPRING CREEK	CUB RIVER	1888/05/15	SHARP, LYMAN J (Current)	16S	39E	1	SWSE		0.17	73	216	IRRIGATION
13-311	Decreed	SPRING CREEK	CUB RIVER	1893/02/04	HULL, GILBERT (Current); HULL, HAROLD M (Current); HULL, ROBERT M (Current)	15S	39E	36	SENE		1.34	242.9	67	IRRIGATION, STOCKWATER
13-237	Decreed	SPRING CREEK	CUB RIVER	1900/04/01	RALLISON, FREDRICK W (Current)	16S	40E	6	NWNW	4	0.15	64	22	IRRIGATION
13-62	Decreed	SPRING CREEK	CUB RIVER	1902/05/15	GOLIGHTLY, DONALD D (Current); GOLIGHTLY, NONA (Current)	16S	40E	6	NWNW	4	0.2	36	114	IRRIGATION
13-258	Decreed	SPRING CREEK	CUB RIVER	1903/08/31	CHADWICK, MAY S (Current)	16S	40E	6	NWNW	4	0.58	102	29	IRRIGATION
13-216	Decreed	SPRING CREEK	CUB RIVER	1903/08/31	GOLIGHTLY, DONALD D (Current); GOLIGHTLY, NONA (Current)	16S	40E	6	NWNW	4	1.8	400	114	IRRIGATION
13-144	Decreed	SPRING CREEK	CUB RIVER	1903/08/31	MOSEY, JOSEPH L (Current)	16S	40E	6	NWNW	4	0.2	85	167	IRRIGATION
13-273	Decreed	SPRING CREEK	CUB RIVER	1903/09/01	RALLISON, FREDRICK (Current)	16S	40E	6	NWNW	4	0.24	77	22	IRRIGATION
13-274	Decreed	SPRING CREEK	CUB RIVER	1903/09/01	SHARP, LYMAN L (Current)	16S	39E	1	SWSE		2.85	756	216	IRRIGATION
13-274	Decreed	SPRING CREEK	CUB RIVER	1903/09/01	SHARP, LYMAN L (Current)	16S	40E	6	NWNW	4	2.85	756	216	IRRIGATION
13-239	Decreed	SPRING CREEK	CUB RIVER	1930/04/01	BECKSTEAD, ANNE (Current); BECKSTEAD, LINDEN (Current)	15S	39E	25	SESE		0.8	140	40	IRRIGATION
13-210	Decreed	SPRING CREEK	CUB RIVER	1930/04/01	DUNKLEY, BERNELL (Current); DUNKLEY, LESLIE L (Current)	15S	39E	25	SESE		1	175	50	IRRIGATION

* Water Rights decreed from source Spring Creek in Worm Creek Decree. Note that IDWR database indicates tributary source is Cub River but USGS maps indicate that tributary source is actually Worm Creek.