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WATER RESOURCES
WESTERN REGION

February 16, 1995

David R. Tuthill, Jr., Manager
Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Dear Mr. Tuthill:

Marty Broom and I have discussed your February 3, 1995 letter to him concerning the several verbal complaints your office has received inferring that he may have wrongfully irrigated his field, identified in ASCS files as Field #1, with Porter Creek water.

We agree that your letter was polite and friendly and would have been appropriate had this subject not already been investigated and resolved by your office with assistance from Watermaster Berntsen. We feel that the issue of lawful irrigation of this field should be put to rest permanently instead of cropping up every time someone chooses to raise the issue.

Enclosure 1 shows three acres in the SE corner of that 38+ acre quarter quarter that are situated south of the Porter Creek Road on a steep rocky hillside and which are, therefore, not normally irrigated. The eight acre parcel belonging to Mr. Broom is also identified.

The first ASCS aerial plat in Enclosure 2 shows that irrigated Field #1 comprised only 2.7 acres back when Angel Madarieta owned the ranch and helped prepare the plat of irrigated fields as an ASCS board member. The second ASCS plat shows the slight change in the size of Field #1 to 3.1 acres when the current irrigated acres were plotted on Nov. 11, 1983.

If one adds the 3 nonirrigated acres in the SE corner (see Enc 1) to the 5 nonirrigated acres in Mr. Broom's parcel, plus the estimated several acres lost to the O/D tree-lined ditch and the rocky ravine between Fields 2 and 3, it clearly is not possible to irrigate more than the adjudicated 31 acres of total cropland or pasture in the NESW of Section 12.

Before the massive flooding of part of Field #1 began to occur due to lack of ditch maintenance by Mr. Charters and the Wolfgrams, that 3-acre field was irrigated with the ditch that carried Porter Creek water from the SE corner of Field #4 in a northwesterly direction across #4, thence northeasterly across the county road and thence north until it flowed into what is now the Oliver/Dobson ditch on Mr. Broom's property.

Part of that ditch still exists and the irrigation is very evident in the two aerial photos I have. Also, one arrow denoting the direction of water flow from that ditch into Field #1 is evident in the graphic plat provided to the FLB by IDWR early in the adjudication when the water right was designated as 65-10250

When I first purchased the ranch in April 1982, I irrigated Field #1 each season with water from what is now the O/D ditch, except during those times when it was saturated from excessive ditch seepage from that ditch. After I installed a mainline completely across Fields #3 and #4, I began irrigating Field #1 with sprinkler pipe. Any person who says otherwise is either mistaken or deliberately lying.

Your explanation to Mr. Broom that he may move around and irrigate a different decreed 31 acres in that quarter quarter each season, but may not do so in the same season, is the third variation of the law that you have adopted without any legal authority to do so. Neither the IDWR nor any other bureaucracy has Constitutional or statutory authority to change or re-interpret the Idaho Code and western water case law.

I'm sure you recall your last interpretation given under oath in court (i.e. that the Department feels it is acceptable to irrigate an excessive number of acres in each quarter quarter in a single season so long as no more than the decreed number of acres is irrigated after irrigation water becomes scarce and the watermaster is called on duty).

In our spontaneous post trial questioning of three jurors individually, each one said that the above testimony by you in Dovel vs. Dobson caused the jury to find no negligence when O/D removed my irrigation water in order to unlawfully apply it to different fields than were decreed, which also exceeded the total of decreed acres in one season. That deviation from the Idaho Code as it was written during the PRBA, ignored 100 years of western water case law, and also cost me about \$43,000 for plaintiffs' and defendants' lawyer fees.

The fact that field examination is not required in the SRBA due to an amendment written by IDWR employees, does not alter the considerable case law which prohibits irrigation of different fields than were historically irrigated, without first filing a transfer application.

During the nine years since the creation of the Porter Creek Water District, my family, my employees, my lessee and I have been subjected to frequently changing directives which deviate from Idaho Water Law, selective enforcement of the Idaho Code by Department employees, and unwarranted field inspections reporting hearsay quoted as fact resulting from so-called verbal complaints such as those cited in your above referenced letter.

My efforts to work within the framework of our water district have failed because (1) Mr. Lester has suggested that the other members not adopt my suggestions and (2) the single wateruser who is the most frequent violator of the water law also holds the deciding vote. Therefore I herewith formally request that this flagrant harassment and abuse of the Director's discretionary power be halted as follows:

1. Instruct Mr. Lester and other appropriate Western Region employees to stop responding to undocumented, unwritten complaints of alleged wrongdoing, by trespassing on my property accompanied by other residents who have no reason to be there, without my knowledge or permission, in matters that do not involve legitimate IDWR concerns.

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2. Instruct both the water district advisor(s) and the watermaster to read and become familiar with the appropriate Chapters in Title 42 and Title 18 of the Idaho Code, just as any other state officer must do before they are qualified to administer or enforce the law. Then explain to them that they must uphold the entire water law, not just that portion which may be convenient at any given time.

Last season Watermaster Berntsen withheld critical water from me after Double Diamond had finished sprinkler irrigating for the season, by permitting them to dump all of the available Porter Creek water out the end of a pipe onto uncultivated sand and gravel in the guise that they were increasing cropland soil moisture.

3. Stop exceeding the Department's statutory authority by attempting to redefine what was clearly mandated in the Payette Adjudication and the Idaho Code. Applying the letter of the law to my water rights while claiming that Mr. Woods is entitled to divert his entire irrigation water right just to irrigate one-half acre of land which was not even adjudicated defies logic and violates the law.

If you feel that any of these simple requests are unreasonable, I shall be happy to discuss them with you in person. However I will not be subjected to another session of shouting denials with either the watermaster or Mr. Lester.

Please respond to my request with either a phone call or note at your early convenience.

Sincerely,

George Dovel

Encls 1 & 2

CLT: Marty Broom