Payette River Basin, State of Idaho
Water District No. 65

Watermaster
Ron Shurtleff

102 North Main Street
Payette, Idaho 83661

Phone 208-642-4465
Fax 208-642-1042
E-mail, waterdist65@srvinet.com

RECEIVED
SEP 2 1 2004
WATER RESOURCES
WESTERN REGION

September 20, 2004

John Westra
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear John,

I have received a report of injury to a water right in Round Valley. I have visited the site and spoken to the parties that are involved. I have also prepared this report for Mr. Charles E Lambert.

I am sending you a copy of the report so that you may be aware of what has taken place.

I am sorry but the black and white copies of the photos do not represent the situation very well. The color photos were sent to Mr. Lambert, if you wish to see better detail I can E-mail the photos to your office.

If you have any questions or advice please give me a call

Sincerely,

Ron Shurtleff
Payette River Basin, Water District No. 65

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September 10, 2004

Charles E. Lambert
10535 Raygor Road
Colorado Springs, CO. 80908

Dear Mr. Lambert,

As per our conversation on the phone I am providing you with report of my visit to your property in Round Valley, Idaho regarding a report of an injury to a water right by one of the water users on the unnamed stream, a tributary to Round Valley Creek.

The report from Mr. Tim Shields stated that the flow rate within the unnamed stream that serves his irrigation water right as well as a pond located on his property had suddenly reduced to an unusually low condition, below a rate that had been experienced in the time that he has lived on the property.

After receiving permission from you to enter your property I set an appointment with Mr. Shields and walked up the unnamed stream starting at the Shield's property. I discovered two man made diversions from the unnamed stream both located on land that is likely in your ownership. The lower (most down stream) diversion appears to have been performed with the angled blade of a dozer, and this diversion has likely been in existence for many years, as it is well overgrown with grass. To get across the stream at this point it was necessary to wade through a grassy marsh about 15 to 20 feet wide with water 2 or 3 inches in depth. The grassy marsh extended several hundred feet to the south and carried water into the stream bed of the creek to the south named Sinks also a tributary to Round Valley Creek. I was not able to determine the rate of flow that moved through this altered route; however I could see that during this time of the season when the flows are at their lowest it does reduce the mainstem flow by a significant amount.

The second (upper) diversion to the stream is a very recent development. It is located upstream of a large grassy marsh in the main stem of the Unnamed stream. It appears to have been hand dug and extends southward also towards the natural channel of the Sinks stream. The ditch was not running water the day that I visited however there was evidence that sand bags were used to dam up the flow of the unnamed stream in order to force it to enter and flow into the diverting ditch. While this diversion was active it is very likely that nearly the entire flow of the unnamed stream was caused to bypass its natural stream channel.

It is likely that the reason for the new diversion is for the purpose of stockwater for the large number of sheep that were present on your place during the day of my visit.

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Water District No. 65

Watermaster
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I have researched the water rights on this unnamed stream and found one existing irrigation water right belonging to Tim Shields and Penny Darst. There are two Stockwater Rights on the stream, one belonging to you for .02 cfs, and another belonging to Donald J. Martin for .03cfs. Your Right has a priority right of 1899, and Mr. Martins Right has a priority date of 1960. Both Stockwater Rights have priority over any irrigation right but can only be appropriated for the purpose of watering stock and during the time when livestock are present on the property.

Now, to get to the place where I detect injury to a water right, it appears that the combined effect of the two diversions from the Unnamed Stream created a condition of nearly no flow in the steam at the Shields property. Either one of the diversions alone may not have caused an alarming situation. The old existing diversion appears to draw more water than the stockwater right allows (.02 cfs or 8.97 gallons per minute). This right can only be exercised when livestock are present, as they were in this case. The second diversion could not be justified when the first diversion existed, and if the original diversion was to be curtailed to allow the second diversion, the second diversion would also be held to the .02 cfs diversion rate.

I do not see any reason that you should be prevented from exercising your stockwater right and I do not detect that Mr. Shields has any intent to complain about your right to water livestock from the unnamed stream. I do however find that the combination of the two diversions occurring simultaneously does create an injury to the downstream water rights. I further find that the continual and uncontrolled nature of the old diversion that bypasses the natural stream bed of the unnamed stream falls outside of the rights provided by the .02 cfs Stockwater Right.

I have not offered any remedies to satisfy the report of injury to a water right since I wish to inform you of the situation and then discuss it with you to understand how you view the situation. Then I hope that we may come to an agreement on a method to avoid any further reports of injury.

I am supplying some photos of what I observed during my visit with a few notes to explain what they contain. Also I have included an aerial photo of the area with a diagram that will help you locate the placement of the facilities that I have explained. I hope that I have not confused this issue and invite you to discuss the situation with me over the telephone.

Sincerely,

Ron Shurtleff

Ron Shurtleff
Payette River Basin, Water District No. 65

CharlesLambert9-10-04

Payette River Basin, State of Idaho
Water District No. 65
102 North Main Street
Payette, Idaho 83661

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Photo #3, This photograph it looking from north to the south down the cut that I assume was made a few years ago with a dozer blade. It allows a portion of the flow from the unnamed stream to cross the small rise in the terrain and end up in the lower portions of the Sinks channel. The water is traveling very slowly about 2 or 3 inches deep and about 15 feet wide.

Photo #2, This is a shot of what I referred to as the second and recent diversion. This picture was also taken from the north looking to the south. I make the assumption that this was dug to water the sheep that were present that day that I visited. When water is directed into this ditch it will also transmit the flow over the natural rise in the terrain and dump into the next stream bed bypassing the natural channel of the unnamed stream.

Photo #1, This photo is looking from the east to the west and is to show that there is evidence that the unnamed stream was dammed up to force water into the new ditch that is pictured in photo #2

Photo #4, This is another picture showing evidence that the unnamed stream was dammed up with an earthen fill plus sand bags to force the stream into the new ditch. This picture is looking form the east to the west and upstream on the unnamed stream. (I wish someone could come up with a name for the unnamed stream)

On the Arial photo I have drawn in the placement of the two diversions, and labeled them #1, the older wide cut that may have been dug with a dozer blade, and #2, the recent diversion that looks to be hand dug and possibly to water livestock and allow drier footing for the stock.

Call me if you have any trouble understanding the situation that I have tried to explain in this report. 208-642-4465

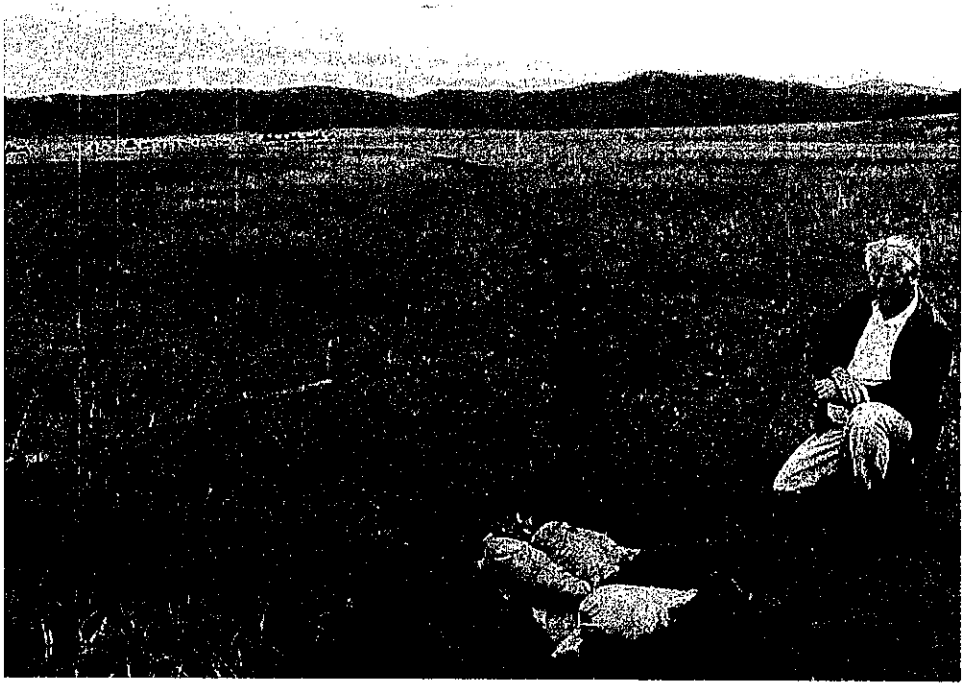
I have also included Water Right Reports for all of the Rights that I have referred to in this report.

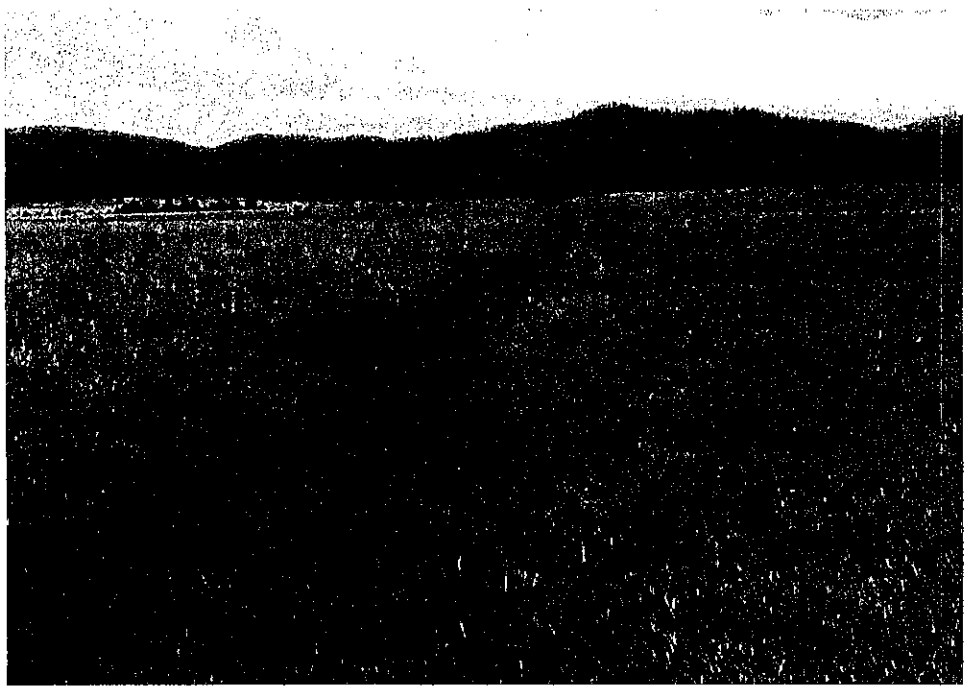
I have sent this same report to Mr. Shields and to the Idaho Department of Water Resources so that they will learn of my actions in this issue.

#1

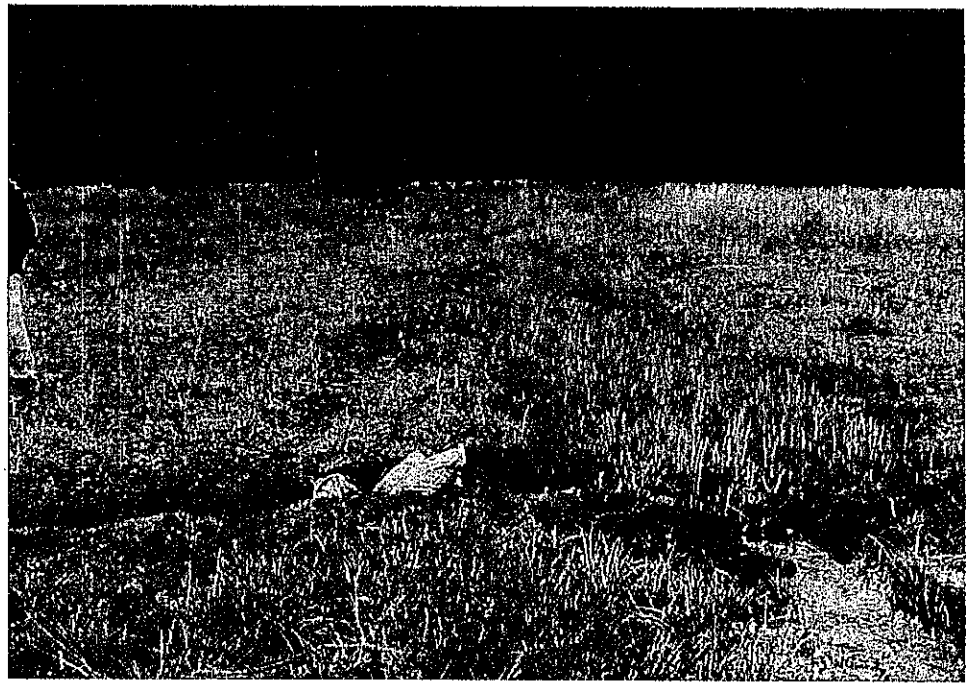


#2





#3



#4


#2
#1

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

09/20/2004

WATER RIGHT NO. 65-13962

Owner Type	Name and Address
Current Owner	PENNY DARST 44 STIRRUP LN CASCADE, ID 83611 (208)382-4515
Current Owner	TIM SHIELDS 44 STIRRUP LN CASCADE, ID 83611 (208)382-4515

Priority Date: 07/12/1999
Status: Active

Source	Tributary
UNNAMED STREAM	ROUND VALLEY CREEK

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	0.6 CFS	
IRRIGATION STORAGE	01/01	12/31		20 AFA
IRRIGATION FROM STORAGE	04/15	10/31		20 AFA
AESTHETIC STORAGE	01/01	12/31		20 AFA
Total Diversion			0.6 CFS	

Location of Point(s) of Diversion:

UNNAMED STREAM	SWNE	Sec. 30	Township 12N	Range 04E	VALLEY County
UNNAMED STREAM	SENE	Sec. 30	Township 12N	Range 04E	VALLEY County

Place(s) of use:

Place of Use Legal Description: IRRIGATION VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
12N	04E	29		SWNW	16									
		30		SWNE	4		SENE	10						

Place of Use Legal Description: IRRIGATION FROM STORAGE VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
12N	04E	29		SWNW	16									
		30		SWNE	4		SENE	10						

Place of Use Legal Description: AESTHETIC STORAGE VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
12N	04E	30		SWNE			SENE							

Total Acres: 60

Conditions of Approval:

1.	01J	Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
2.	121	The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
3.	18A	The right holder shall install/maintain permanent measuring devices in such a manner that the amount of water entering the reservoir and the amount of water released from the reservoir can be measured.
4.	26A	Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
5.	R04	Use of water under this water right will be regulated by the watermaster of State Water District No. 65.
6.	R62	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.

Remarks:

1.	Source is known locally as Cramer Creek.

Dates:
Proof Due Date: 03/01/2009
Proof Made Date:
Approved Date: 03/01/2001
Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Application Received Date: 07/12/1999
Protest Deadline Date: 01/22/2001
Number of Protests: 0
Field Exam Date::
Date Sent to State Off:
Date Received at State Off:

Other Information:
State or Federal:
Owner Name Connector: And/Or
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

09/10/2004

WATER RIGHT NO. 65-18195

Owner Type	Name and Address
Current Owner	CHARLES E LAMBERT 105 ARIZONA AVE JACKSONVILLE, AR 72076

Priority Date: 07/06/1899
Basis: Decreed
Status: Active

Source	Tributary
UNNAMED STREAMS	ROUND VALLEY CREEK

Beneficial Use	From	To	Diversion Rate	Volume
STOCKWATER	4/01	11/01	0.02 CFS	
Total Diversion			0.02 CFS	

Location of Point(s) of Diversion:

UNNAMED STREAMS End of Stream Flow	NESWNE	Sec. 30	Township 12N	Range 04E	VALLEY County
UNNAMED STREAMS End of Stream Flow	SWSWNE	Sec. 30	Township 12N	Range 04E	VALLEY County
UNNAMED STREAMS Beginning of Stream Flow	SWNENW	Sec. 30	Township 12N	Range 04E	VALLEY County
UNNAMED STREAMS Beginning of Stream Flow	NENWNW Lt 1	Sec. 30	Township 12N	Range 04E	VALLEY County
UNNAMED STREAMS Beginning of Stream Flow	SESWNW Lt 2	Sec. 30	Township 12N	Range 04E	VALLEY County

UNNAMED STREAMS Beginning of Stream Flow	NESWSW Lt 4	Sec. 30	Township 12N	Range 04E	VALLEY County
UNNAMED STREAMS End of Stream Flow	SESWSW Lt 4	Sec. 30	Township 12N	Range 04E	VALLEY County
UNNAMED STREAMS End of Stream Flow	NWNWSE	Sec. 30	Township 12N	Range 04E	VALLEY County

Place(s) of use:

Place of Use Legal Description: STOCKWATER VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	A
12N	04E	30		NWNE			SWNE							
				NENW		1	NWNW		2	SWNW			SENW	
			4	SWSW										
				NWSE										

Conditions of Approval:

1.	N13	THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
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.
3.	N11	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

Remarks:

1.	Explanatory	PARCEL NO. RP12N04E307965 STOCKWATER, 400 RANGE CATTLE

Dates:
Licensed Date:
Decreed Date: 11/03/2000
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plantiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False
Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

09/16/2004

WATER RIGHT NO. 65-9586

Owner Type	Name and Address
Current Owner	DONALD J MARTIN
Current Owner	ELEANOR J MARTIN
	23555 TEXAS RD
	CALDWELL, ID 83607-8995
	(208)459-2824

Priority Date: 07/01/1960
Basis: Decreed
Status: Active

Source	Tributary
UNNAMED STREAM	ROUND VALLEY CREEK

Beneficial Use	From	To	Diversion Rate	Volume
STOCKWATER STORAGE	1/01	12/31		6 AFA
STOCKWATER FROM STORAGE	1/01	12/31		6 AFA
DIVERSION TO STORAGE	1/01	12/31	0.03 CFS	6 AFA
Total Diversion			0.03 CFS	

Location of Point(s) of Diversion:

UNNAMED STREAM	SESW	Sec. 19	Township 12N	Range 04E	VALLEY County

Place(s) of use:

Place of Use Legal Description: STOCKWATER FROM STORAGE VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
12N	04E	19		SESW										

Conditions of Approval:

1.	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.

Remarks:

1.	Explanatory	STOCKWATER, 80 RANGE CATTLE.

Dates:
Licensed Date:
Decreed Date: 10/31/2000
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:
State or Federal: S
Owner Name Connector: OR
Water District Number: 65
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plantiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close