



State of Idaho

DEPARTMENT OF WATER RESOURCES

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EASTERN REGION

JAMES E. RISCH
Governor

KARL J. DREHER
Director

August 18, 2006

Jay N. Anthony
P.O. Box 201
Inkom, ID 83245

CERTIFIED

Re: Water Rights from Upper Rock Creek

Dear Mr. Anthony,

Thank you for hosting me at your residence yesterday. This letter is a response to the letter sent by you and three other users on Upper Rock Creek that have not been receiving water from the creek despite sharing the best irrigation priority date on the creek. Since receiving the letter, I have had an opportunity to investigate the matter. Portions of my investigation includes the following:

1. Myself, Dennis Dunn of IDWR, and Steve Hebdon, Watermaster of Water District 29, visited the area on Thursday August 8, 2006. We observed that Upper Rock Creek was dry at Old Highway 91. We traveled up to the Todd Gilbert diversion and found that the diversion was dammed up by boards with only minimal water passing. We also observed Todd Gilbert's Ponds where the water was diverted and spoke to Mr. Gilbert about his irrigation practices of allowing a portion (about 1/4) of the water to pass for downstream users.
2. I visited the house of Joyce Orders and found her husband home. I left a card at the house for Mrs. Order to call me. Mrs. Orders called me the next day and scheduled an appointment to meet with her and her son Tom Romriell on Thursday, August 10, 2006.
3. I made a visit to the Joyce Orders home on August 10, 2006. There I met Tom Romriell, Joyce Orders son who is in care of the property irrigated by Mrs. Orders. Mr. Romriell and I went to his point of diversion located just below the Kirk Jackson residence. On our way to the point of diversion, we passed the pond used for temporary storage of the Orders water before diverted for irrigation. Some water was in the pond but the pond was observed to be very low. At the Orders point of diversion on Upper Rock Creek, water was present but was in very short supply. By estimate, 1 to 2 gallons per minute. It was observed that there was not a diversion structure but was diverted using rocks and a plastic dam. The orders diversion travels down a ditch some 50 feet before entering a pipeline that conveys water to the storage pond. No water was observed running into the pipeline. We did see water squirting from a drip irrigation line adjacent to a tree on the Jackson property.
4. Tom and I visited the Kirk Jackson Residence and found Mr. Jackson present. Mr. Jackson showed us his point of diversion on the creek. His diversion was a

- cement structure with boards inserted to dam up the water. The dam was approximately 12 to 18 inches high and water was backed up into it and running over the top of the dam. Also present was an electric powered pump connected to PVC lines for delivery of Mr. Jackson's water. The pump was operating and was currently diverting water to drip lines. Mr. Jackson switched the valve to the sprinklers to demonstrate how the valving operates for irrigation of the lawn. A print out copy of the water rights on Upper Rock Creek was observed with Mr. Jackson and Mr. Romriell. Mr. Jackson questioned why he was a 1910 right rather than 1902 as others. We discussed possibilities of petitioning the SRBA court in that regard if Mr. Jackson had the proof that could be provided.
5. Tom Romriell took me back to his home where he was able to produce a letter prepared by Randy Budge, a Pocatello attorney, concerning the Orders water right from Upper Rock Creek. The letter was an assessment of the standing of the Orders water right on Upper Rock Creek and included copies of detailed water reports for some of the other water users and a copy of the original claim for the Orders water right with a claimed priority date of June 1, 1955. The letter explained the priority system for delivery of water but did NOT provide any advise or direction on how much water Tom Romriell was to let pass his diversion for downstream water users.
 6. I visited with Jay and Goldie Anthony and their son on August 15, 2006. While at the Anthony's, I observed their point of diversion on Upper Rock Creek which consisted of an electric powered pump to pump directly from the creek. There was no water observed in the creek at the location of the pump. However, just downstream from the pump, a small puddle of water was observed in the bottom of the creek. Mr. Anthony explained that the water was the result of a small spring on the south side of the creek bank. My observation of the bank recognized some limited amount of phreatophyte-type plants and green vegetation. The lush vegetation was limited to the areas surrounding of the spring.
 7. I visited with Brenda Figone and her son Tim. They showed where their spring collection box was located and a pond excavation near the creek for the purpose of collecting spring water that is then pumped up hill into the spring collection box. The pond was observed to be about 10 feet in diameter but was not measured for depth. Mrs. Figone represented that it was not very full. I walked down to the creek bottom to observe how the creek may interact with this pond. I found the creek bed to be lower than the pond and that some limited amount of water was running out of the pond into the creek bed. Mrs Figone and I discussed the fact that her water right from the creek is for stock water and not for domestic use. She was aware and indicated that she had to sell her livestock since she did not have water for them to drink. I left a copy of the watermaster list of water rights with Mrs. Figone.

It has been a pleasure to meet with most of the water users on Upper Rock Creek. The issue of receiving water from Upper Rock Creek does not seem to be new. Of major concern to me is how to equitably distribute such small portions to downstream water interests without wasting (or losing) water through seepage losses into the creek bed.

The past practice of splitting ¼ of water at the Todd Gilbert diversion appeared to work. However, the allegation of the aggrieved water users is that Joyce Orders or her authorized representative has been intercepting nearly all of that water, out of priority, below the Jackson Property.

Here is what must happen immediately.

1. Todd Gilbert needs to make the appropriate adjustments to his diversion to allow a legitimate ¼ of stream flow to pass his diversion. I need to mention that other than the water right owner, myself, or a future authorized watermaster, no other person is authorized to adjust any diversions on the creek.
2. Kirk Jackson should pull all boards from his diversion and allow all water to flow past his diversion for downstream senior water right holders. If Mr. Jackson feels that the SRBA court got the priority date wrong, he needs to appeal to the court for redress. Until redress is achieved, his partially decreed priority date of June 14, 1910 stands. Mr. Jackson could begin to divert or retain water for diversion only after flows pass the Jay and Goldie Anthony place but only in the quantity that is passing the Anthony's.
3. Joyce Orders, her son Tom Romriell, or any other representative of the Orders water right will NOT divert any water unless and until water is bypassing the Richard and Karen Burks place and only in the quantity passing the Burks.

Since this matter is so critical at this time of year for those that have been shorted their water right(s), this letter has been sent to all users on the creek by Certified mail. It is expected the recommended actions explained in this letter be acted upon immediately following receipt of this letter. The deadline for action is August 28, 2006. If the appropriate actions are not followed, the Department will take the necessary steps to make the changes and adjustments. Additionally, if the water users do not implement the actions recommended above on or before August 28, 2006 the Department will consider the issuance of Notices of Violation to those involved together with civil penalties for their actions or inactions.

For future or long-term administration of these water rights and for maximized benefit to all water right holders, you may wish to consider the following:

1. Organizing and preparing a water users agreement for the purpose of taking turns using the water or going on "rotation." Those who have retention/storage ponds would benefit the most by this method. I could help in organizing such a meeting but I feel that legal representation retained by the water users should draw up such an agreement.
2. Investigate the installation of a gravity fed pipeline for users of 0.08 cfs or less. This may be the only way to get more water to most if not all of the users on Upper Rock Creek. It would require a transfer of point of diversion for all participating users and should be designed/engineered and installed such that the

- point of diversion is shared with Gilbert diversion and limits the amount of water to the water rights included in the pipeline. Gilberts diversion also requires a measurement device so that remaining flows would be allowed to flow past to the Orders diversion and other junior water right holders (stock water). The Orders diversion needs a control and measurement structure. The cost of design and installation of a pipeline may qualify for government subsidy. Those who have participated in the past are the USDA farm service agency (NRCS), Idaho Fish and Game (EQUIP), and some conservation groups (i.e. Trout Unlimited).
3. Petition the Director of the Department of Water resources to include the Upper Rock Creek Drainage into a water district for administration by a Watermaster. Whether you are in your own water district or in a larger district (i.e. District 29), someone needs to be available to measure and distribute your water rights regardless of any of these options.

My role in finding a long-term resolution is limited. I can introduce people to other people; facilitate a meeting for the purpose of discussion, and encourage the department on the creation of (or annexing into) a water district.

Please feel free to call or write if you have any questions. My phone number is (208) 525-7161. My email address is: roger.warner@idwr.idaho.gov

Sincerely,



W. Roger Warner
Water Rights Supervisor -- Eastern Region

Enclosure: Watermaster's spreadsheet for Upper Rock Creek,

Cc: Todd and Janine Gilbert, 29-4107 and 29-4141,
Deloy and Marjorie Armstrong, 29-13138,
Kevin and Sharon Baird, 29- 13141
Kirk and Susan Jackson, 29-13179 and 29-13175,
Richard and Karen Burks, 29-10518,
Tim and Brenda Figone, 29-11816,
Joyce Orders, 29-4042,
Tom Romriell, (acting as agent for J. Orders),
Don and Laverne Voeltzel, 29-13126,
USDA Forest Service, 29-12354,
USDI Bureau of Land Management, 29-13012,
Tim Luke, IDWR- Boise.



