



Marsh Creek Water District 45F

1049 East 1000 South

Albion, Idaho 83311

Don G. Gunderson, Watermaster

(208) 673-5359 or gundy@safelink.net

Water District Board: *Pat McCammon / George Kelley / Jeff Chatburn*

December 7, 2006

George Kelley
979 S 1050 E
Albion, Idaho 83311

Re: Halard Ditch at Airport Runway, Illegal fill-in of water channel

Dear George:

I have received telephone calls from both Mr. Lee Jolly and his attorney on several occasions inquiring on the situation of the illegal filling in of the Halard Ditch delivery system on the east end of the Albion Airport runway.

Upon the original complaint that I received from Mr. Jolley, I informed you that you could not do what you were doing in filling that right of way in. You stated to me at that time, you would take care of the problem and would probably be putting a buried irrigation conduit into that point on the property. As of today the problem has not been corrected and I am still getting inquiries.

I did inform Mr. Jolley at the time of the complaint that this was a Civil matter, that all I could do was inform you of the laws that protect a Water Districts delivery system.

We will be having run-off this coming spring from two different sources above the blocked area and that's dealing with Howell Creek and also a portion of Rose Creek. Due to the fact the water will not be directed over into Larry Mahoney's ole homestead and Goodman's property but through the regular channels at high water and this blockage, the road could be washed out along with other damage to private property flooding.

I have submitted an attachment of the Laws that pertain to a Lateral Ditch within the State of Idaho for your review. Title 18 Crime and Punishments. Chapter 43, Irrigation Works; from the Watermasters Handbook supplied by Idaho Department Of Water Resources.

Respectively submitted;

Don G. Gunderson, Watermaster 45F

CC: Lee Jolley
Michael P. Tribe, of Ling Robinson & Walker Atty's
Albion Highway District Commissioners
Marsh Creek Water District 45F Directors
Idaho Department of Water Resources
Bill Kelley

18-4308. CHANGE OF LATERAL DITCH OR BURIED IRRIGATION CONDUIT.

Where any lateral ditch has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling the said land, shall have the right at his own expense to change said lateral ditch or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such lateral ditch or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change.

A landowner shall also have the right to bury the ditch of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the ditch owner, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the ditch owner.

In the event that the ditch, lateral, buried irrigation conduit, or canal is owned by an organized irrigation district, canal company, ditch association, or other irrigation entity, the written permission of the entity must first be obtained before a ditch, lateral, buried irrigation conduit, or canal is changed or placed in buried pipe by the landowner.

While a ditch owner shall have no right to relocate his ditch on the property of another without permission, a ditch owner shall have the right to place his ditch in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but not to exceed five (5) days after the start of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the ditch owner.

No more than five (5) days after the start of construction, a landowner or ditch owner who buries a ditch in pipe shall record the location and specifications of the buried irrigation conduit, including primary and secondary easements, in the county in which the burying is done, and shall provide the irrigation entity that supplies water to the ditch, with a copy of such location and specifications and the construction plans utilized. The irrigation entity shall keep and maintain such records and have them available for the public.