



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

April 29, 2010

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

Re: Use of Palmer Pipeline on Cub River Irrigation Company's Middle Ditch; Delivery of Water Rights on Spring Creek

Dear Mr. Foster,

This letter documents certain verbal and e-mail communications that I have had with you over the past three weeks concerning water distribution issues on Spring Creek and use of the Palmer Pipeline from the Cub River Irrigation Company (CRIC) and Preston-Whitney Irrigation Company (PWIC) Middle Ditches.

Until further notice is given, the Idaho Department of Water Resources (Department or IDWR) continues to direct you to work with the managers of the CRIC and PWIC to prevent the flow of water from PWIC's pipeline or conveyance system from Lamont and Johnson Reservoirs to the CRIC Palmer Pipeline. This direction is provided given the issues raised by Mr. Golightly and the Department's need to obtain further documentation from PWIC and CRIC regarding the location of lands and identification of water users who own shares in both PWIC and CRIC who have received delivery of water via the Palmer Pipeline. The Department verbally requested from PWIC's attorney documentation about the shareholders and locations of shares common to both PWIC and CRIC. This issue was also recently discussed with CRIC's attorney. IDWR has not yet received the requested information. Please note that at this time we are only asking to prevent the delivery of any PWIC water from the Lamont-Johnson conveyance system over to the Palmer Pipeline. CRIC is not prevented from using the Palmer Pipeline to deliver water from the Cub River via the Middle Ditch diversion under CRIC's Cub River water rights.

Until further notice is given, the Department also directs you to deliver PWIC's Cub River water right 13-2 to the Middle Ditch diversion from the Cub River. The Middle Ditch from the Cub River is the point of diversion for this right based on Department records. IDWR records do not document that the PWIC Fill Ditch (aka Cub River-Worm Creek Canal) is the authorized point of diversion for right 13-2. The Fill Ditch therefore should not be used for delivery of right 13-2 until PWIC's water right transfer application is approved or other approval is issued by the Department. The Palmer Pipeline and other PWIC conveyances may be used to convey any portion of PWIC's right 13-2 to PWIC shareholders who have historically relied on deliveries from the Middle Ditch diversion out of the Cub River provided IDWR can verify that the place of use for such deliveries are within PWIC's authorized service area.

Regarding PWIC's protested water right transfer, you are advised that a pre-hearing conference on this matter is scheduled between the protestants and PWIC for Monday, May 3, 2010 at the IDWR Regional Office in Idaho Falls. IDWR has invited CRIC to attend this conference in order to provide an opportunity for all the parties to discuss the water delivery issues common to the parties that have been raised before the Department. Mr. Golightly expressed interest in the Department's facilitation of such a meeting and pre-hearing conference during a visit with the Director in Boise on April 9, 2010. Your presence at the conference is not required.

The Department again directs you to administer and deliver water rights by priority on Spring Creek consistent with the Department's correspondence to you dated May 14, 2009 (copy enclosed). Mr. Gib Hull must have an installed and functional measuring device before receiving delivery of any water from Spring Creek. Failure to maintain an adequate measuring device at Mr. Hull's diversion shall result in your refusal to deliver Mr. Hull's Spring Creek water rights.

The Department wishes to arrange a visit with you over the next month to review any diversions from Spring Creek and the Kirby Pond Drainage. The purpose of the visit to Spring Creek will be to investigate creek flows and assure that any diversions from the creek are lawful and in priority.

Please contact me directly at 208-287-4959 if you have any questions regarding these matters.

Regards,

A handwritten signature in black ink, appearing to read "Tim Luke". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Luke".

Tim Luke
Water Distribution Section

Encl: Copy of IDWR Correspondence to

Cc: Gary Spackman, IDWR Interim Director
Jeff Peppersack, IDWR Boise
James Cefalo, IDWR Eastern Region
Eldon Golightly
Rob Harris, Attorney, Preston Whitney Irrigation Co.
Randy Budge, Attorney, Cub River Irrigation Company



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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.

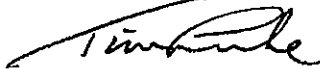
On May 5, 2009, Department representatives met with Preston Whitney representatives to further discuss options for using Spring Creek as a conveyance channel for delivery of stored water. This meeting was preceded by several discussions between Mr. Hull, Ernie Carlsen and I. During the meeting with Preston 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

Water Rt No	Basis	Source	Tributary	Priority Date	Owner(s)	Twp	Rnge	Sec	QQQ	Gvt Lot	Rate (cfs)	Vol (af)	Acres	Water Use(s)
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
					HULL, GILBERT (Current); HULL, HAROLD M (Current); HULL, ROBERT M (Current)									IRRIGATION, STOCKWATER
13-311	Decreed	SPRING CREEK	CUB RIVER	1893/02/04	HULL, ROBERT M (Current)	15S	39E	36	SENE		1.34	242.9	67	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	MOSE, 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.