



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

September 30, 2010

Scott L. Campbell
Moffat, Thomas, Barrett, Rock & Fields
P.O. Box 829
Boise, Idaho 83701

Re: Response to Your Correspondence Dated September 9, 2010 Regarding IDWR's
September 1, 2010 Order Requiring Measuring Devices and Controlling Works in Water
District 13-A

Dear Mr. Campbell:

Your correspondence dated September 9, 2010 regarding the above reference order issued by the Idaho Department of Water Resources ("IDWR" or "Department") has been forwarded to me for response. Your letter advised IDWR that certain water rights were omitted from Attachment A of the Department's September 1, 2010 order, including rights 13-217, 13-218, 13-219, 13-221 and 13-222.

The Department acknowledges that rights 13-217, 13-218, 13-219 and 13-221 were omitted from Attachment A. However, right 13-222 was included on page 3 of Attachment A. The other rights were intentionally omitted from Attachment A because the rights listed in Attachment A, as indicated in the attachment heading, were limited to "Worm Creek and Spring Creek Rights Only". The sources of water for the other rights referenced in your letter are unnamed streams tributary to Worm Creek. The intent of providing the rights in Attachment A was to show the current land owners who may be associated with the water rights from Worm Creek and Spring Creek. IDWR limited Attachment A to Worm Creek and Spring Creek because those were the two streams where we had focused our diversion inventory and for which we had found significant discrepancies between water right owners of record and current land owners of record. Although we did inventory other streams in Water District 13-A, including Cub River, Maple Creek and Sugar Creek, we found either no water right ownership issues (i.e., Cub River), no or fewer diversions, or we had incomplete ownership and address information based either on water right records or the county tax lot records (i.e., Maple and Sugar Creeks). However, to the extent that we had valid addresses, owners of water rights from other sources were included on the order Service List and subsequently served a copy of the order.

Water rights 13-217, 13-218, 13-219 and 13-221 appear to be held by your clients, including Eldon Golightly or E&M Trust (13-217), and either Bert Wheatley, Seth Wheatley, or Wheatley Properties LLC (13-218, 13-219, 13-221). Based on my inventory of diversions for rights 13-219 and 13-221, it appears those rights are associated with what is known locally as Gamble Pond. Gamble Pond is located on an unnamed stream and has several head gates, one of which controls or re-diverts water to an irrigation pump owned and operated by Seth Wheatley,

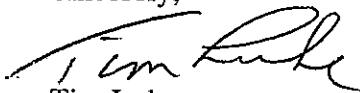
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and another that controls discharge from the pond to the creek downstream and a second irrigation pump owned and operated by Seth Wheatley. The point of diversion listed for rights 13-219 and 13-221 matches the location of Gamble Pond. I had recommended to Mr. Wheatley that he should file a water right transfer application to add the pump from the stream below the pond as a second point of diversion for rights 13-219 and 13-221, and also add the other pump as a point of re-diversion to these same two rights. A transfer would also have the benefit of updating the ownership of right 13-219 from Blaine and Marcella Gamble to Wheatley. Both rights 13-219 and 13-221 are subject to IDWR's measurement order. At a minimum, the two pumps should be measured or have measuring devices installed.

IDWR could find no distinct point of diversion for right 13-218, which is listed as being owned by Bert and Ellen Wheatley. With respect to right 13-217, which lists Donald and Nona Golightly as the current owners of record, our inventory found the existence of a drain channel that runs into one of Golightly's ditches and three small ponds on the southern end of Golightly's property. The location of the drain channel and confluence with the Golightly ditch matches the point of diversion legal description for right 13-217. At the time of our inventory, very little or no water was observed in the drain channel. Mr. Golightly indicated that there is typically no water in the drain channel. IDWR finds that measuring devices are not necessary for rights 13-217 or 13-218 given that the diversions either do not exist or that water rarely exists at the diversion points. IDWR recommends instead that the Water District 13-A watermaster routinely observe the Golightly drain channel and record if and when water may contribute to Golightly's irrigation ditch and ponds. IDWR notes that Mr. Golightly has no water rights authorizing either the three small ponds, or the two larger ponds located on Mr. Golightly's property just west of the three small ponds. During my visit last May I understood that Mr. Golightly had submitted a water right transfer to IDWR but our regional office advised that the transfer application was returned to Mr. Golightly because it was incomplete. Our regional office advised that the transfer application did not address the pond use. Please be advised that IDWR may send Mr. Golightly a Notice of Violation regarding the unauthorized ponds.

Please contact me directly at 208-287-4959 if you have any questions regarding the information in this letter.

Sincerely,



Tim Luke
Water Distribution

Cc: Gary Spackman, IDWR Interim Director
Troy Foster, Water District 13-A Watermaster
IDWR Eastern Region