



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

February 7, 2011

David Laatz
704 S Wenonah Ave
Oak Park, IL 60304

Re: Correspondence to Water Users Regarding Lack of Adequate Measuring Devices and Head Gates on Big Creek, Water District 73

Dear Mr. Laatz,

Attached is correspondence dated January 25, 2011 to holders of water rights with certain diversions from Big Creek that have either no measuring devices or head gates or inadequate measuring devices or head gates. Also attached is a copy of several e-mail exchanges that I have had with your attorney, Jim Speck. You will note from the attached documents that I had not included your Big Creek diversion in the January 25 correspondence based on my understanding that your diversion is no longer used. Mr. Speck's e-mail advises that this understanding is incorrect based on a recent discussion or visit he had with you.

The purpose of this letter is to formally advise you that diversions in Water District 73 must have adequate measuring devices and head gates. If you intend to use your Big Creek diversion this year, please make sure that an adequate measuring device and lockable control gate is installed prior to diverting any water under your water right. If you believe an adequate measuring device and lockable control gate is already installed, please contact me directly, or have your attorney contact me and forward any information that describes or documents the structures that are in place.

Respectfully,

Tim Luke
Water Distribution Section

Enclosure: Copy of IDWR Correspondence dated January 25, 2011

Copy of E-mail Exchange between Jim Speck and Tim Luke, IDWR, January 31, 2011

Cc: Jim Speck
Ted O' Neal, Water District 73 Watermaster

Luke, Tim

From: Luke, Tim
Sent: Monday, January 31, 2011 7:36 PM
To: 'Jim Speck'
Subject: RE: Laatz/73-12038

Jim,

My legal description at the bottom of Attachment A for the Laatz right 73-12038 and diversion was incorrect. My reference to the GPS site tag no, A000764, was correct. The correct location for the ditch heading is SENE Sec 21, 13N 24E, which is the same description given for decreed right 73-12038, so the water right POD is correct as your client stated. I apologize for the typo and confusion.

I did observe the flume crossing Big Ck and the ditch on the south side of the creek on my visit of August 4, 2010. I did not inspect the head gate. At the time of my visit, no water was being diverted and it did not appear that water had been diverted to this ditch system for quite some time - the ditch was not in good condition. The place of use did not appear to be irrigated in 2010 or probably for some time. The watermaster reported that he had not seen the place of use irrigated since about the time he was in high school. I have a photo of the flume and head gate from another IDWR staff member who visited the ditch in 2003 (he no longer works at IDWR). The staff member did not complete an inventory form for this diversion in 2003 but his spreadsheet from 2003 indicated that there was no diversion of water at the time and no measuring device. BLM and IDWR field notes from 2001 indicate that there is a second head gate device about 20 feet below the main gate that can return water back to the creek

If your client does intend to use the ditch this year please advise him to install a measuring device. Our notes from 2003 indicate that there is a slide gate for control at the main head gate but it is not lockable.

I will place a copy of this e-mail thread in the water right file.

-----Original Message-----

From: Jim Speck [<mailto:jim@speckandaanestad.com>]
Sent: Monday, January 31, 2011 1:32 PM
To: Luke, Tim
Cc: 'Dave Laatz'
Subject: Re: Laatz/73-12038

Tim,

After reading your comments at the bottom of Attachment A to your letter (a copy of which is attached), I contacted my client, Dave Laatz, the owner of 73-12038. I noted that the description in your letter of the location of the point of diversion for his water right differs from that in his partial decree (copy also attached). Dave confirmed the decree is correct and then drew in the diversion and delivery system on a map I had printed from your website (see attached map). He explains that the headgate delivers water into a ditch (the white line) on the North side of Big Creek, the ditch then conveys the water to a flume which takes it across to the South side of Big Creek and into another ditch (the second white line) that delivers the water to his property line.

The decreed point of diversion, as identified on this map, is and has been used by my client every year. Please put a copy of this e-mail in the IDWR file for this water right. Contact me if you have any questions.

Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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C. L. "BUTCH" OTTER
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GARY SPACKMAN
Interim Director

January 25, 2011

**Re: Pending Notice of Violation – Failure to Maintain Measuring Devices and Head Gates
on Diversions from Big Creek, Water District 73**

Dear Water User,

Water right records on file at the Idaho Department of Water Resources ("IDWR") indicate that you are the current owner of record of one or more water rights authorizing the diversion of water from Big Creek, tributary to the Pahsimeroi River in Water District 73. IDWR staff inspected head gates and measuring devices on Big Creek with the water district watermaster last fall. IDWR found that some Big Creek diversions lack adequate measuring devices and head gates.

IDWR issued a notice in April of 2002 reminding water users of water district resolutions adopted in both 2001 and 2002 requiring installation of measuring devices and head gates. IDWR issued an order in November of 2002 requiring installation of head gates and measuring devices for all diversions in Water District 73. IDWR issued a similar order to Water District 73 water users in 1992.

IDWR finds that some diversions from Big Creek in Water District 73 lack adequate measuring devices and/or head gates, and other diversions in which measuring devices and/or head gates require some maintenance. Attachment A of this notice identifies those Big Creek diversions for which measuring devices and/or head gates do not exist, are inadequate, or are in need of maintenance.

Holders of water rights whose names and addresses are listed on Attachment B of this notice must install adequate measuring devices and head gates on their diversions from Big Creek, or correct maintenance deficiencies, on or before water is diverted for irrigation purposes this year. IDWR asks for your full cooperation concerning this matter. Pursuant to Section 42-1701, Idaho Code, water right holders who neglect to comply with notices and orders requiring installation of measuring devices and controlling works may be subject to the administrative enforcement actions provided by Section 42-1701B, Idaho Code. Enforcement actions may include the issuance of Notices of Violation and Cease and Desist Orders, as well as possible civil penalties.

Please contact Tim Luke, IDWR, at 208-287-4959 if you have questions or need assistance concerning this matter.

Respectfully,

Tim Luke

Cc: Ted O'Neal, Water District 73 Watermaster
IDWR Eastern Regional Office

ATTACHMENT A

BIG CREEK DIVERSIONS NEEDING MEASURING DEVICES AND/OR HEAD GATES, OR MAINTENANCE OF MEASURING DEVICES AND HEAD GATES

- Big Creek Diversion # 1
Water right owners: Troy Ziegler, Larry Whittier, Berend Friehe
Users as per watermaster: Bauchman, Ziegler, Whittier
Head gate: Gate provides adequate control, is lockable and in good condition.
Measuring device: 8 ft. rectangular wooden weir. Weir crest and sides are wooden and should be fitted with sharp metal edges or angle iron. Weir crest is bowed and not straight. Recommend replacing crest with straight wooden timbers or metal plate with sharp metal edge across crest.
- Big Creek Diversion #5/California Ditch
Water Rt Owners: Stephen Bauchman, Flying Joseph Ranch, Big Creek Ranch
No head gate or measuring device installed. IDWR directs watermaster to discontinue delivery of water to ditch unless adequate controlling works and measuring device is installed. Ditch must be bermed or blocked off to prevent water to ditch if devices are not installed. Note that the water right POD is located further downstream on channel in NENW Sec 13, T13N, R23E. Correct POD location is NESE Sec 13, T13N R24E.
- Big Creek Ranch Diversion (Big Creek #6)
User as per watermaster & water rights: Big Creek Ranch
Head gate: Head gate washed out at time of visit; Needs to be re-located and re-set.
Measuring device: 5 ft. wide ramped flume. Flume was not level, approach velocity at angle, sediment build-up on ramp and flume entry, water poling and eddying on right side of flume. Flume needs to be re-set and leveled, minimize approach velocity problems.
- Hamilton Ditch (Big Creek # 7)
Users as per water rights: Big Creek Ranch, Ted O'Neal, Lee J Watson;
Owners per watermaster: O'Neal, Big Creek Ranch, Watson & Sid Dowton
No head gate or measuring device installed. IDWR directs watermaster to discontinue delivery of water to ditch unless adequate controlling works and measuring device is installed. Ditch must be bermed or blocked off to prevent water to ditch if devices are not installed.
- Big Creek Miller Diversion (Big Creek # 8)
User as per watermaster or water rights: George Miller
Head gate: Gate provides adequate control, is lockable and in good condition.
Measuring device: No measuring device installed. Watermaster reported that a flume was installed the prior year but it was destroyed in spring flood. A new measuring device must be installed.

Note: Diversion located in NENW Sec 21, T13N R 24E (site tag no. A0000764) for rights 73-172 (Challis Ck Cattle Co.), 73-12038 (Laatz) & 73-12037 (Hall) did not appear to be in use for a number of years. Right 73-172 is diverted at Big Creek #1 as per watermaster. Owners of right 73-172 need to file a water right transfer to correct the point of diversion.

Diversions on north side of Big Creek (Div # 2, 3 & 4) owned/operated by Northwest Fidelity Trust and Kratz (formerly Dyer) had good head gates and measuring devices. Div # 4 not used or active.

AMMENDED - ATTACHMENT A

<u>NAME</u>	<u>ADDRESS</u>	<u>CITY ST ZIP</u>
BAUCHMAN, LYNDELLA & STEPHEN G	PO BOX 10	CHALLIS ID 83226
BIG CREEK RANCH LLC	PO BOX 5987	KETCHUM ID 83340
FLYING JOSEPH RANCH LLC		
C/O JOSEPH LCARK	7213 PERIMETER RD S	SEATTLE WA 98108
FRIEHE, BEREND & CARLA	2498 RD S NE	MOSES LAKE WA 98837
MILLER, GEORGE	50 P MILLER RD	MAY ID 83253
NORTHWEST FIDELITY TRUST	PO BOX 133	MAY ID 83253
O NEAL, DEBBIE A & TED	81 FUREY LN	MAY ID 83253
RICHARD KRATZ	PO BOX 4420	KETCHUM ID 83340
WHITTIER LARRY D & JUDI	4402 PAHSIMEROI RD	MAY ID 83253
ZIEGLER, MAURENE & TROY R	HC 61 BOX 3080	CHALLIS ID 83226
SID DOWTON	PO BOX 7	ELLIS ID 83235
WATSON, LEE J	4177 ROAD L	ORLAND CA 95963