



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380
Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

June 5, 2009

Albert Barker
PO Box 2139
Boise, ID 83701-2139

John Stevenson
36 Hillside Ranch Rd
Bellevue, ID 83313

Stephan Kvanvig Stone & Trainor
PO Box 83
Twin Falls, ID 83303-0083

Dean Rogers Inc
28 Hillside Ranch Rd
Bellevue, ID 83313

RE: Delivery of Rt. 37-118 and others in area

Gentlemen:

Precipitated by the Barker letter of May 20th, Kevin Lakey (Watermaster of WD37 and 37M) and I visited the Hillside Ranch Road area on May 28th. We met with Mr. Stevenson and later met with Mr. Rogers. Mr. Rogers gave us a tour of the water features on the Rogers' property that relate to both the Stevenson's and Rogers' water rights.

The water uses on these two properties have a symbiotic relationship. The water sources for the uses consists of a combination of ground water developed from drilled wells that are either pumped or flow artesian at land surface, shallow ground water or springs captured via the excavated Buhler (Buller sp?) drain and wastewater or unnamed streams collected by the Buhler drain. It is my understanding that the Buhler drain as shown on the USGS Quad is a constructed drain and not a natural stream channel. At times ground water from the wells is directed into the Buhler drain and then re-diverted. At times ground water is directed into natural streams in the area (Patton or Stalker Creek) and then re-diverted downstream.

On the Rogers' recommended rights, the water flowing in the Buhler drain is described as "Unnamed stream tributary to Stalker Creek". The Rodgers' recommended rights include:

37-2598	Unnamed stream
37-11614	Unnamed stream
37-2643	Ground water and Unnamed stream
37-2661	Ground water and Unnamed stream
37-7633	Ground water and Unnamed stream

On the Stevenson's recommended rights, the water flowing in the Buhler drain is described as "Swamp tributary to Sinks". The Stevenson's recommended rights include:

37-118	Swamp
37-2576	Ground water
37-2681	Ground water
37-2649A	Ground water
37-2649B	Ground water
37-7644	Ground water

The record indicates that right 37-118 was initially decreed to Buller in the Frost Decree. The right is based on development of water from a "swamp" in the "Swamp ditch". I have attached copies of documents subsequent to the Frost Decree that may further define this right. Of importance to note is the requirement to maintain the ditch by the right holder and the exclusive nature of the priority which has not been captured in the current recommendation.

The issue raised in the Barker letter appears to focus on the installation of several gravel dams in the Buhler drain on the Rogers property that impede the flow down the Buhler drain to the Stevenson property. When Mr. Rogers was asked why these gravel check dams have been installed he indicated it was to raise the sub-water in the area. He indicated that over the years the sub-water has decreased as a result of land use changes up gradient and the sub-water is not as it used to be. He indicated that the original Buller ditch (Swamp ditch) was filled in around the 1950's and his family constructed what is now known as the Buhler drain. He indicated that water flowing off of his property is largely a result of the ground water that he diverts and conveys through the Buhler drain system or waste water or sub-water as a result of his ground water application that is captured by the Buhler drain. Mr. Rogers maintains that he has a right to modify this drainage system on his property.

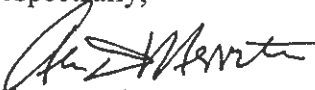
My review of the recommendations finds there are numerous inconsistencies with how the points of diversions, re-diversions, injection and sources have been described in the rights listed above. The issue of the drainage ditch appears ripe for litigation in either a private civil matter or the SRBA. Note that the parties have not objected to the recommendations of each other nor raised the issue of the Buhler drain in the SRBA. My review finds that Stevenson has a senior right as compared to Rogers for the water from the Buhler drain; however, since the Buhler drain flows into Stalker Creek tributary to Patton Creek tributary to Silver Creek tributary to Little Wood River these rights as recommended should be regulated with the priorities of these other streams.

Review of the points of diversions, re-diversion or injection finds there presently are not adequate measuring devices or control works for the watermaster to adequately regulate the water rights for these two properties.

Because this letter likely only captures a portion of the potential issues, I propose that IDWR and the watermaster host a meeting in this office or participation by phone with the parties (and their attorneys if desired) in the near future to further the discussion.

Please let me know in the next 10 days what days you may be available in late June or early July to schedule such a meeting.

Respectfully,

A handwritten signature in black ink, appearing to read "Allen Merritt". The signature is fluid and cursive, with a large initial "A" and "M".

Allen Merritt, PE
Southern Region Manager

CC: Kevin Lakey – Watermater 37&37M
Tim Luke, Chris Bromley, Doug Jones - IDWR

DECREE

Widdowson *File 37-9*

That R. F. Buller and Rosa B. Buller are entitled to 400 inches of water in their swamp ditch, as of a prior and exclusive right, so long as they maintain their said swamp ditch, and continue to develop that amount of water therein.

R. F. and Rosa B. Buller, July 1st, 1904, swamp on lands. 400 inches

Findings

That the defendants R. F. Buller and Rosa B. Buller, for the purpose of irrigating certain lands belonging to them in Sections 30 and 31, T. 1N, R. 19 E., and in Section 8, T. 1S., R. 19 E., and for the purpose of draining certain portions of their said lands, constructed a certain ditch known as the swamp ditch, in the year 1904, and thereby developed and put to a beneficial use 400 inches of water, and first applied said water to said lands on July 1st, 1904.

Conclusions of Law.

That the defendants, R. F. Buller and Rosa B. Buller, are entitled to the exclusive use of the 400 inches of water developed by them from the said swamps described in the findings.

37-0118