

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT 37
107 WEST 1ST
SHOSHONE, IDAHO 83352
(208) 886-2451



Kevin Lakey
Watermaster

April 28, 2016

Dean Rogers Inc.
28 Hillside Ranch Rd.
Bellevue, Idaho 83313

Dean:

I am writing in follow-up to our visit on your farm on April 14, 2016. Specifically, I would like to address your point that you believe the section of the Buhler Drain through your property is your private ditch because you and/or your predecessors re-dug the drain and changed its location to better suit your land management. You stated that if the Buhler drain is a private ditch, you should not be required to re-measure your water if it was already measured at your well diversions.

After some research and discussion with personnel at the Idaho Department of Water Resources (IDWR), I have the following points to explain:

Many of your water rights are described as being diverted from, injected into, or re-diverted from an "unnamed stream". Because those rights are listed with those conditions related to a stream, IDWR and/or Water District 37 have jurisdiction over your water rights because they are described as being diverted from a stream and not from a private ditch. These conditions were placed on your rights during the Snake River Basin Adjudication and if they were not correct they should have been objected to during the adjudication.

On your water right maps, the unnamed stream from which your rights come is often in the same location as the Buhler drain. Water Right 37-118 which is owned by John Stevenson also lists its source as the Buhler Drain. Since both owners' rights are delivered from the Buhler drain, there must be a separation of water and therefore measuring devices and controlling works are required for all water being diverted from the Buhler drain.

As I have said before, the raising of water levels in the Buhler drain by your gravel dams constitutes diversion. The gravel dams must be removed and replaced by a controllable structure. Also, I have enclosed a photo map of your water right 37-2642. As the map indicates, this water right only has five points of rediversion listed. Rediversion can only legally take place at these five points or you must file a transfer to list additional diversions. Along with a controllable structure at these five points you must also have a measuring device.

In my November 23, 2015 letter which is enclosed, I addressed most or all of these issues as related to your gravel dams in the Buhler drain. In that letter I stated that you needed to have those dams removed before diversion started in 2016. I still hold to that point. If you fail to comply, IDWR will likely issue a notice of violation which could also lead to fines. I do not wish this to go that far, but am prepared to do so if need be.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin Lakey", with a stylized flourish at the end.

Kevin Lakey
Water District 37

Cc:

Dean Rogers

John Stevenson

Albert Barker

Laird B. Stone

Tim Luke, IDWR

Allen Merritt, IDWR

State of Idaho
Department of Water Resources

Water Right

37-2642

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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107 WEST 1ST
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November 23, 2015

Albert Barker
P.O. Box 2139
Boise, Idaho 83701-2139

John Stevenson
36 Hillside Ranch Rd.
Bellevue, Idaho 83313

Stephan Kvanvig Stone & Trainor
Attn: Laird B. Stone
P.O. Box 83
Twin Falls, Idaho 83303-0083

Dean Rogers Inc.
28 Hillside Ranch Rd.
Bellevue, Idaho 83313

Gentlemen:

I am writing in regards to the ongoing situation on the Buhler drain. Since you were all copied on a letter sent by Allen Merritt in June of 2009 you should be aware of the facts, so I will not go into a lengthy discussion of the history. To briefly describe the matter, John Stevenson from Hillside Ranch is claiming that gravel dams placed in the Buhler drain by Dean Rogers are impeding the flow of the drain and injuring the delivery of water right 37-118 to the Hillside Ranch. Consequently Mr. Stevenson asked that the dams be removed. In that 2009 letter, Mr. Merritt proposed hosting a meeting between all involved parties at the Southern Region offices of the Idaho Department of Water Resources (IDWR). That meeting was never held. In his 2009 letter, Mr. Merritt also voiced concerns over the inconsistencies in how water rights owned by both Stevenson and Rogers were claimed in the Snake River Basin Adjudication (SRBA). Since that time, Stevenson has made some change as to how water right 37-118 is described. In a brief research of the Rogers' rights, it appears no changes have been made.

In late October or early November 2015 John Stevenson called asking if any decisions had been made by Water district 37 or IDWR concerning the removal of the gravel dams. Mr. Stevenson called again on November 16, 2015 to see if anything had been decided. He reminded me that the language for water right 37-118 in the Frost Decree stated that the owner of 37-118 maintain the drain in order to keep the right viable. He said that he believed that removal of the dams would be part of his maintaining the drain. My first response to Mr. Stevenson was that ditch maintenance and cleaning easements were likely a civil matter, but upon further research into this matter, there are also water rights issues involved.

As to cleaning and maintenance, the Hillside Ranch does have an easement for maintenance on the Buhler drain. From recent inspections of the Buhler drain, I would suggest that if the gravel dams were removed, there would be little purpose of additional maintenance at this time. Therefore, for reasons I will discuss below, I am ordering that the gravel dams be removed. Since Dean Rogers installed the dams. He is responsible for their removal. If Hillside Ranch insists on additional maintenance, the offer for a meeting at the Southern Region of IDWR still stands to help discuss any concerns that may arise. If there is no cooperation or consideration of others, this situation could turn into a civil matter as was my original response. An informal meeting with IDWR could be much cheaper for all involved.

As to water right issues, the language written into some of the Dean Rogers' rights allow Mr. Rogers the right to inject into and re-divert water from the Buhler drain, but those processes must be measured and controlled. Currently those practices are neither measured nor controlled. With the writing of this letter I am ordering that all diversion of water by Mr. Rogers from the Buhler drain be measured with an approved measuring device. For open channel sources, that would include weirs, flumes, submerged orifices or some other approved open channel device. As a clarification at this point, Mr. Merritt's June 2009 letter stated that Mr. Rogers said the gravel dams were installed to "raise the sub-water in the area". In my mind, raising the sub-water is a form of diversion because it lifts the water into the root zone where nearby plants can use it. This form of diversion will no longer be allowed, because it cannot be measured. If water is pumped or diverted from or into the Buhler drain via a closed conduit, the flows must be measured with an IDWR approved flow meter. As to check structures, gravel dams will not be allowed. Check structures must be hand adjustable using removable boards and/or adjustable head gates. Both Open channel and closed conduit diversion controls must be adjustable and lockable.

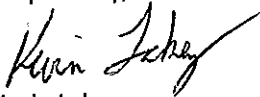
As to deliveries at the Hillside Ranch's Willis #1 headgate, all measuring and control devices must also be in working order and meet the same requirements as described above.

Implementation of all requirements for both Hillside Ranch and Dean Roger's Inc. must be made before diversion starts in 2016.

Water rights for both the Hillside Ranch and Dean Rogers Inc. in the Buhler drain have been under the jurisdiction of Water District 37 or 37 M for considerable years. The requirements outlined above were in place long before the recent changes to add ground water to Water district 37. Unfortunately Water District 37 has performed poorly in the enforcement of water right controls in the Buhler drain. As Watermaster, I take full responsibility for this poor performance. With declining flows in Silver Creek and the impending call on groundwater sources in the Wood River Valley, it is imperative that Water District 37 do the most it can to insure equitable and legal water deliveries throughout the district. The requirements in this letter are a part of that process.

I realize I have not included every minute detail in this situation and there will be questions and concerns. We will have to work through those as they come. This will be a process requiring concerted cooperation and effort. I look forward to those efforts from all involved.

Respectfully,



Kevin Lakey

Water District 37