



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Mathew Weaver

October 3, 2025

KURT AND JANET BIRD
56 LOWER TEXAS CREEK RD
LEADORE, ID 83464
bigbird@centurytel.net

KERRY PURCELL
1775 LEE CREEK RD
LEADORE, ID 83464
klazyp@yahoo.com; mccordjuanita@yahoo.com

RE: Obstructions in Big Timber Creek

Dear Water Users:

Big Timber Creek splits into two stream channels (west channel and east channel) just upstream of the confluence with Little Timber Creek. Little Timber Creek flows into the west channel, in the rare instances when there is water in lower Little Timber Creek. The west channel and east channel come back together approximately ½ mile downstream of the split. According to USGS maps and hydrography information available to the Department, both channels of Big Timber Creek are active channels with continuously flowing water. Therefore, both channels are subject to the Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code). Pursuant to Section 42-3803, Idaho Code, no person may obstruct a jurisdictional stream channel without first obtaining a permit to alter the channel.

Kerry Purcell operates a diversion dam and headgate on the west channel of Big Timber Creek. Kerry's water rights for the west channel diversion are junior and are often curtailed by mid-summer. The only other diversion on the west channel is also associated with a junior water right. Therefore, by mid-summer the west channel is simply a flow-through channel.

On September 25, 2025, I received a phone call from Kerry who was concerned that Kurt Bird had constructed an earthen dam at the head of the west channel, just downstream of the split, which was obstructing flow into the west channel. Kerry summarized his concerns in an email (dated 9/25/25) and a letter (dated 9/25/25).

Shortly after receiving the complaint from Kerry, I contacted Kurt to discuss the obstruction in the west channel. Kurt stated that he had built a small earthen dam at the head of the west channel to reduce the losses in Big Timber Creek. Kurt diverts water downstream of the location where the east and west channels come back together. According to Kurt, the water flowing in the west channel gets trapped at Kerry's diversion dam. Water pools up behind Kerry's dam and leaks around Kerry's headgate. Kurt stated that he blocked the channel to avoid the channel seepage losses and to avoid the blockage at Kerry's diversion dam.

On September 30, 2025, Jen Vogel from the Department of Water Resources conducted a site visit to investigate the issues raised by Kerry and Kurt. Jen observed that the west channel of Big Timber Creek had been blocked by an earthen dam. Part of the dam had been breached because of higher flows in Big Timber Creek as a result of recent thunderstorms. Therefore, there was some water flowing past the earthen dam and down the west channel at the time of the investigation. Jen also observed that there was a large mass of woody debris comprising the Purcell diversion dam built in the west channel. Some water was flowing through the Purcell dam, but the flow in the west channel was so low that it was not possible to determine whether the dam would impede the flow in the west channel at higher flows.

Without an approved stream channel alteration permit, Kurt does not have the authority to block the west channel of Big Timber Creek. Therefore, Kurt must remove the earthen dam at the head of the west channel immediately. Big Timber Creek must be allowed to flow freely down both channels. If Kurt wants to build a dam on the west channel in future years, he must first obtain a stream channel alteration permit.

Once Kerry's water rights are curtailed due to a scarcity of water on Big Timber Creek, he no longer has a right to capture or obstruct the flow in the west channel. Therefore, Kerry must reconstruct his diversion dam in a way that allows the full flow of the creek to pass the diversion dam unimpeded when Kerry's water rights are curtailed. For example, the dam could be constructed in a way that pressure boards could be easily added or removed to the dam depending on whether Kerry's water rights were available. Kerry must remove or open his diversion dam immediately to allow the water in the west channel to flow down to the senior water rights on Big Timber Creek.

This letter is being sent to both water users so that each understands the requirements for this year and for future irrigation seasons. Please contact me if you have any questions.

Respectfully,



James Cefalo
Regional Manager – IDWR Eastern Region

Cc: David Graybill, Water District 170 (david.graybill@idwr.idaho.gov)

Big Timber BT9 diversion

From Juanita McCord <mccordjuanita@yahoo.com>

Date Thu 9/25/2025 8:52 AM

To Cefalo, James <James.Cefalo@idwr.idaho.gov>

CAUTION: This email originated outside the State of Idaho network. Verifv links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

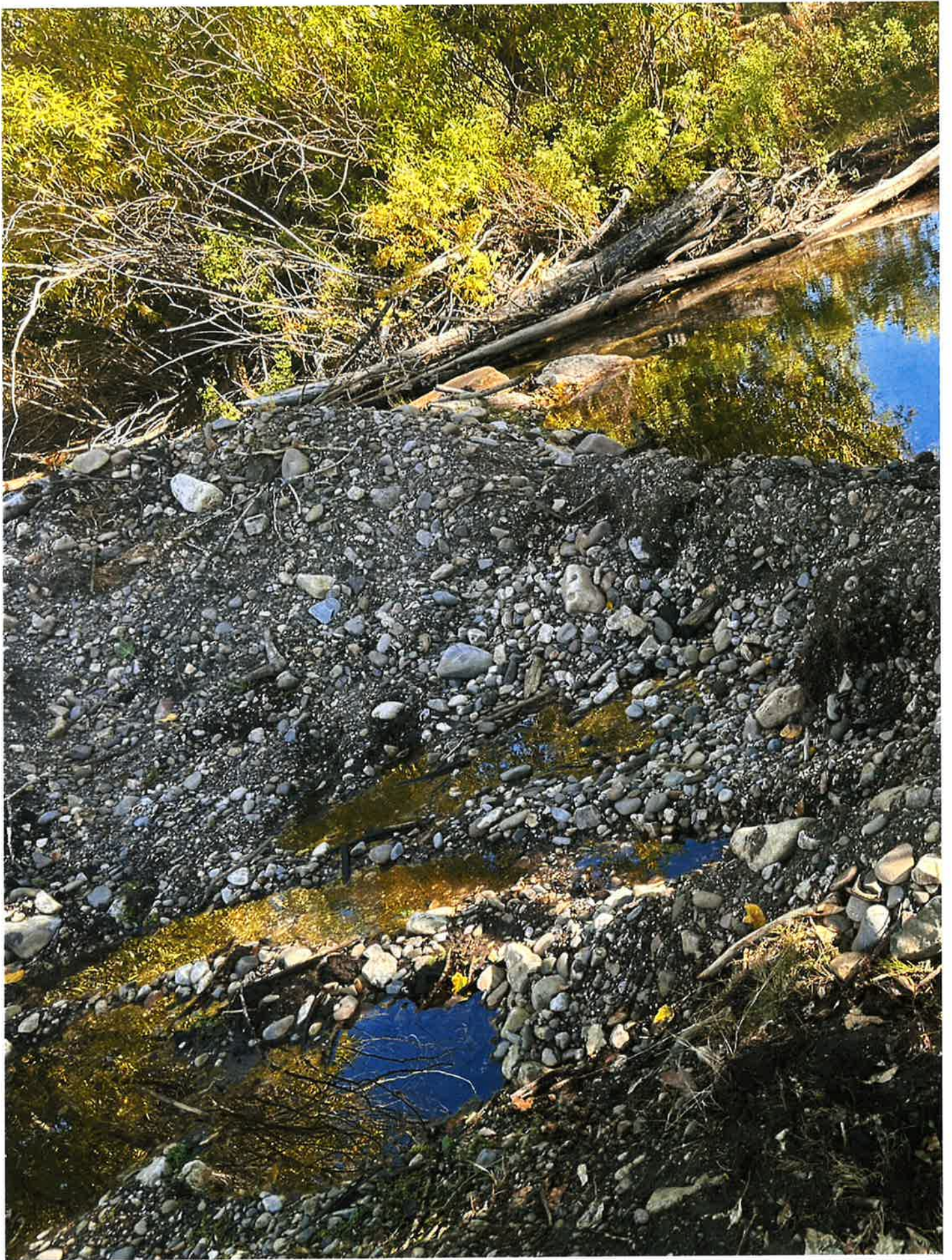
This is Kerry Purcell's Statement. Thank you.

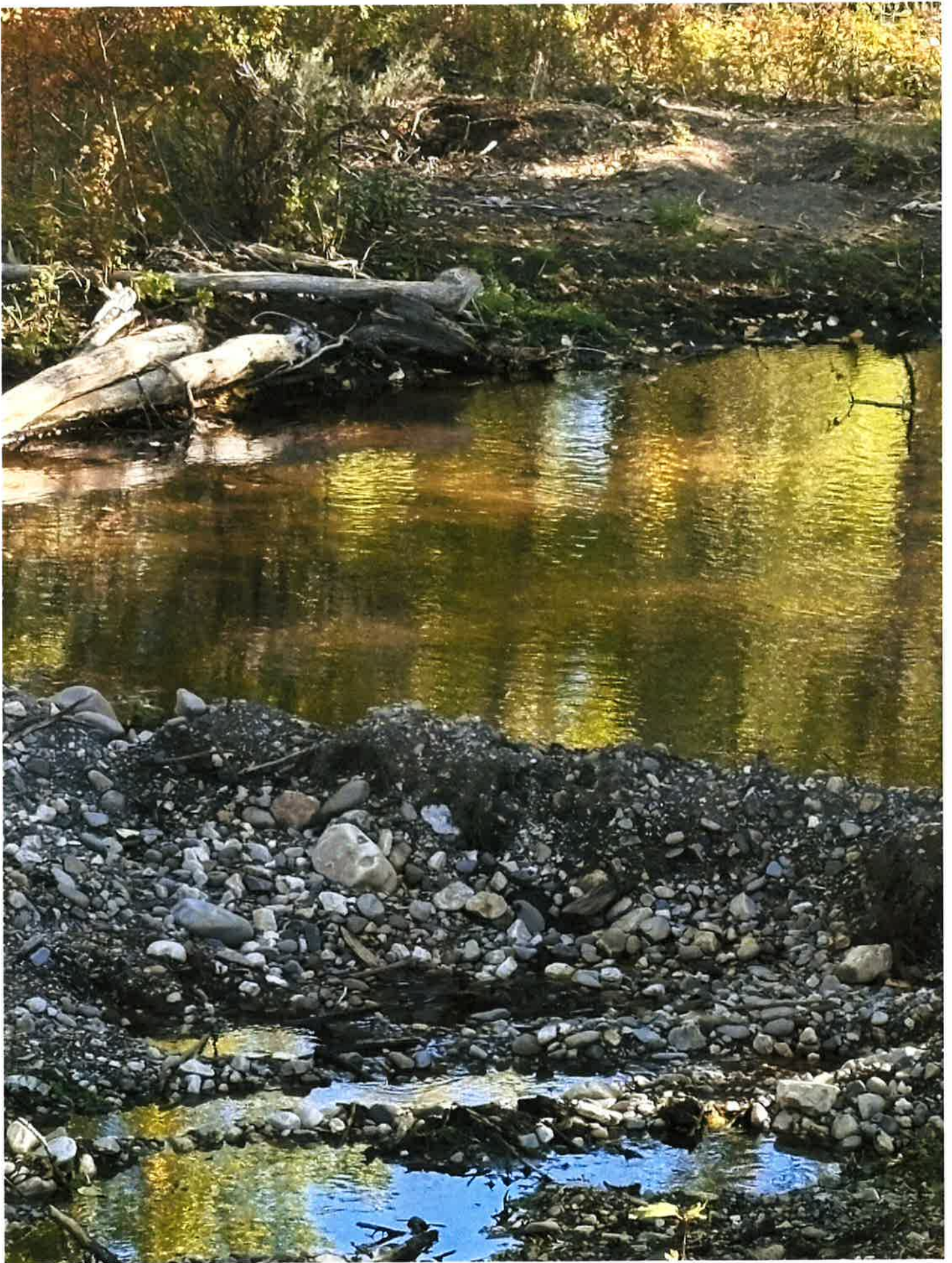
To the Idaho Department of Water Resources

I, Kerry Purcell, am writing a statement against Kurt Bird on Big Timber Creek near Leadore, Idaho. I am Watermaster on Timber Creek and Kurt had called me on another matter concerning his ditch. I found a dam on Timber Creek put in place by backhoe, blocking the water from flowing to my headgate BT9, and Whittaker's BT8 diversion. He was forcing the water to run in the upper channel as the creek splits into two channels about 70 yards above my diversion. Kurt's reason is the channel is 150 yards long and he is losing over 100 inches of water in this channel, he also said he thought the channel may be secondary to the channel he forced the water into. Both diversions have been in place for at least 110 years and 120 years. I do not agree with him on this. I am not representing the Whittaker diversion or them in any way and only stating their diversion for location purposes. Juanita McCord and I met with Kurt Bird on the evening of Sunday, September 21st at my diversion. He was informed that what he was doing was illegal and Juanita sent him the Idaho Statues on water law concerning this issue. Kurt said it was his water and he would leave the dam in place until the Watermaster is off, October 1. This channel runs year around. It is NOT a seasonal channel. Kurt Bird is de-watering this channel for his own purposes of gaining more water or so he believes. I do not feel Kurt had the authority of dam off this channel, which serves two legal diversions, nor did he get any permission to do so from the State of Idaho.

What I am trying to achieve with this statement Kurt removes the dam blocking the channel and agrees to stop doing this permanently. He also told me he had dammed this channel off at other times in past years, this is a year around channel and it should be left alone.

Kerry Purcell







9-25-2025

RECEIVED

SEP 29 2025

DEPT. OF WATER RESOURCES
EASTERN REGION

To Idaho Dept. of Water Resources

I, Kerry Purcell am writing a Statement against Kurt Bird on Big Timber Creek near Leddore Idaho - I am watermaster on Timber Creek and Kurt had called me on another Matter concerning his Ditch I had Found a Dam on Timber Creek put in place by a Backhoe Blocking the water from flowing to my headgate BT9 Diversion and Whittaker BT8 Diversion he was forcing the water to run in the upper channel as the creek splits into two channels about 70 yard above my Diversion Kurt's reason is the channel is 150 yard long in creek channel and he is losing over 100 inches of water in this channel, he also said he thought the channel may be secondary to the channel he forced the water into, both Diversions have been in place for at least 110 years and 120 years I do not agree with him on this - also I, we are not Representing the Whittakers Diversion or them in anyway only stating their Diversion for location purposes, Myself and Juanita met with Kurt Sunday Evening the 21st on my Diversion, He was informed that what he was doing was illegal and Juanita sent him Idaho Statutes on Water Law concerning this Issue, Kurt said it was his water and he would leave it, (The Dam) in place until the Watermaster is off, This channel runs year around, It is Not a seasonal channel Kurt Bird is Re-watering this channel for his own Purposes of

gaining more water or so he believes, I do not feel Kurt had the Authority to Dam off this channel, that Services two legal Diversion, Nor did he get any Authority to do so from The State of Idaho.

What I am trying to achieve in this Statement is that Kurt removes the Dam blocking the channel - he also told me he has dammed this channel off at other times in past years, and that he agrees to stop doing this permanently - It's a year around channel - and it should be left alone

Remy Russell



Whittaker 74-15613

Purcell
74-16004
74-1834
74-398
74-399

Bird 74-1801
Ellsworth Agus Ranch
74-42
State of Idaho 74-1093