



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

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**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

August 4, 1999

Rex Payne  
Farm Service Agency  
55 N 5<sup>th</sup> St  
Montpelier, ID 83254

James Smith & Conrad Nebeker  
8086 Hwy 30  
Montpelier, ID 83254

Re: Lloyd Ditch

Dear Gentlemen,

Our office received a call from Mr. Conrad Nebeker this morning concerning the water right ownership and delivery issue on the Lloyd Ditch. It is my understanding that Mr. Nebeker, who represents James Smith on this matter, was visiting Mr. Payne at the Farm Service Agency (FSA) regarding ownership of the rights on the Lloyd Ditch. Mr. Nebeker sent to our office by facsimile several copies of letters from different parties attesting that water has been diverted to the Lloyd Ditch and beneficially used on lands currently owned by Mr. Smith. It is my further understanding that the FSA owned much of the land that has historically been irrigated by the Lloyd Ditch prior to Mr. Smith's purchase of the land within the past year. It is my further understanding, as per Mr. Nebeker, that the Lloyd Ditch remains blocked near its heading from the river as a result of activity by a local water user. Additionally, we are aware of certain ownership disputes regarding the Lloyd Ditch rights between Mr. Tracy Baxter and other water users in the area, including Mr. James Smith.

Attached to this letter is a copy of correspondence that I sent to the parties on the Lloyd Ditch just yesterday, August 3, 1999. This correspondence documents our understanding that portions of water rights 11-00946 and 11-00947 are appurtenant to lands that are owned by James Smith and that said lands can only be irrigated from the Bear River by diversion of water through the Lloyd Ditch. I have personally reviewed water delivery records gathered by the Water District 11 watermaster and maintained by both the Water District and the Idaho Department of Water Resources. These records confirmed that water has been delivered to the Lloyd Ditch by the watermaster during two of the past five years (1997 and 1994), and at least one year between 1989 and 1993. The records also indicate that water was not delivered in other years but there is no evidence of water not having been delivered for a period of five or more consecutive years.

Based on my research and review of this matter on behalf of the Department, we believe that Mr. Smith has an ownership interest in at least some portion of water rights 11-00946 and 11-00947. The attached letter suggests that Mr. Smith's proportionate share of ownership in these rights may be at least 43 percent. The attached letter further suggests that Mr. Baxter may also own

some percentage of these same two rights, as well as all of right 11-00927 that has likely been diverted via the Lloyd Ditch, as well as perhaps the Jensen Ditch or other unnamed ditches. The Department acknowledges that there is some question regarding the exact percentage of ownership of rights 11-00946 and 11-00947.

Based upon the above understanding, the Department is instructing the Water District 11 watermaster to deliver water, in accordance with Chapter 6, Title 42, Idaho Code, to Mr. Smith at the Lloyd Ditch. This delivery can not be accomplished until the dam blocking the Lloyd Ditch is removed so that Mr. Smith can make beneficial use of the water. Any party responsible for blocking a ditch may be guilty of a misdemeanor pursuant to Chapter 43, title 18, Idaho Code.

Sincerely,



Tim Luke  
Water Distribution Section Mgr.

Enclosure

Cc: Norman Young, IDWR Administrator  
Pete Peterson, Watermaster  
Tracy Baxter  
IDWR Eastern Region

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