



State of Idaho

DEPARTMENT OF WATER RESOURCES

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PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED

DEC 26 1995

December 20, 1995

Kent Foster
Attorney at Law
PO Box 50130
Idaho Falls ID 83405

Department of Water Resources
Eastern District Office

Re: Illegal diversion from spring near West Fork of Sandy Creek
in Lemhi County

Dear Kent:

After receiving your letter on October 30, 1995, on behalf of your clients, Lemhi Hydropower Company and Mr. Douglas K. Hone and Mrs. Kathleen L. Hone, I spoke with Bob Foster, a Department employee in Salmon, Idaho, and also reviewed photographs and copies of BLM file information regarding the Schafner Ranch. On December 11, 1995, Stephanie Snook of the Bureau of Land Management sent me a copy of a letter mailed to you, discussing her recollection of the physical features that existed prior to Mr. Sorenson's construction of a channel from the spring to the headworks of the hydropower intake.

The decreed water rights which you described in your letter to me (74-00200, 74-00203, 74-00204, 74-00408B, 74-00409B, 74-00430, 74-00763) all authorize irrigation from the West Fork of Sandy Creek. None of them describe a point of diversion at the spring source. Water right no. 74-07088 authorizes diversion of water from the West Fork of Sandy Creek for hydropower purposes. It does not describe the springs. The physical information presented to me shows that water from the spring was never tributary to the West Fork of Sandy Creek above the hydropower intake. While your statement that a "right to divert water from the West Fork of Sandy Creek extends to all the tributary sources which combined make up the flows in the Creek" is generally true, a new point of diversion or a new beneficial use must be represented by a water right which describes the point of diversion or the new beneficial use. There is no water right which recognizes a hydropower use from the spring source diverted by Mr. Sorenson. Diversion of water from the spring without a water right is an illegal diversion of water.

The Department will grant until January 15, 1996 for your clients to cease the illegal diversion of water. If not remedied, the Department will issue a cease and desist order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary Spackman".

Gary Spackman

cc: Stephanie Snook
Bob Foster