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Sent To  
**John R. and Patricia W. Challis**  
 Street, Apt. No.,  
 or PO Box No. **PO BOX 1220**  
 City, State, ZIP+4  
**Challis, ID 83226-1220**

PS Form 3800, June 2002

See Reverse for Instructions

*David's copy  
8/10/07 72A file*



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

April 27, 2007

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Interim Director

JOHN R AND PATRICIA W CHALLIS  
CHALLIS CREEK RANCH  
PO BOX 1220  
CHALLIS ID 83226-1220

Re: Illegal Storage Pond

Dear Mr. and Mrs. Challis:

In 2006, you constructed a pond on your property. The pond currently stores surface water and ground water. Following construction of the pond, you filed an application to appropriate water with the Idaho Department of Water Resources (the Department) to authorize storage of water in the pond. The application seeks a water right to store 1.0 acre-foot for aesthetic purposes and 1.0 acre-foot for recreation purposes, but both uses combined will not exceed 1.0 acre-foot. The Department assigned water right no. 72-16686 to the application. The application has not been approved.

You hold several natural flow irrigation water rights. You may place the flow rate authorized by these water rights into your reservoir and store the water in the reservoir up to the volume that would accrue for a 24 hour period. The limited storage of a natural flow water right allows you to store the natural flow for a concentrated irrigation application for a period of time shorter than 24 hours. Storage and withdrawal of the natural flow should occur within an approximate 24 hour time period.

In addition, you may recapture wastewater into the pond that is discharging from irrigation of your own fields. The recaptured wastewater must be reapplied on the lands to which the water right authorizing the use of the original natural flow is appurtenant. The 24 hour storage rule described above also applies to the storage of wastewater.

The Department estimates your pond is about 1/3-acre in size and approximately 6-8 feet deep. The pond was constructed by excavation at a low point on your property. The excavation intercepts groundwater and collects water from one or more nearby springs.

You currently have no valid water right to store or otherwise beneficially use water in excess of the quantities described above or from sources of water not described above. This would include storage of ground water or surface water derived from springs or other sources of water. As a result, you are storing groundwater and spring water without a valid right to do so.

Storage and use of water without a water right is an illegal diversion and use of water under Idaho Code § 42-351. Section 42-351 authorizes the Department to issue notices of violation and cease and desist orders for an illegal diversion and use of water. Idaho Code

§ 42-1701B authorizes the Department to commence civil enforcement actions, which include a monetary penalty, for these violations. In addition, waters you are storing and using are within the boundaries of Water District 72A, and are regulated by a watermaster. This letter outlines actions you must take to avoid enforcement activities, associated monetary penalties, and curtailment of use of water.

The Department has the authority to require you to remove or alter the ponds until you obtain a water right permit. However, the Department feels that such an approach would be unduly burdensome relative to the impact on the resource, given the remaining time frame for approval or denial of the pending applications and the minimal impact your pond has on existing water rights. Instead, the Department feels that, pending issuance or denial of a permit for your pond, compliance should focus on limiting the beneficial uses of the stored water to the extent practicable. Alternatively, you may elect to breach and/or backfill the pond until a permit or water right authorizing the storage is secured.

You must refrain from beneficially using any water stored during the irrigation season beyond that legally stored in conjunction with existing irrigation rights and wastewater recapture. To insure compliance, you must adhere to the following:

1. You must not beneficially use stored water while it is in the pond. Beneficial uses within the pond include stocking with fish, recreation, aesthetics, etc.

2. Pursuant to Idaho Code § 42-701, **on or before May 25, 2007, you must: (a) install a measuring device or other means of measurement approved by the Department that will accurately measure the flow from your redirection pump; (b) install a locking control valve or other locking controlling mechanism at the redirection pump; and (c) install/maintain measuring devices for inflow from wastewater or water delivered to storage pursuant to natural flow rights.**

3. Pumping from your well cannot exceed the rate of surface water inflow to your reservoir from a combination of wastewater and flow diverted under other water rights. Alternatively, you may balance the daily volume of water pumped with the combined daily volume of wastewater and water delivered to the pond from natural flow water rights. You must maintain records of the daily accounting of inflow and outflow, and must submit them to the Department upon request.

4. At the end of the irrigation season (October 15, 2007), unless the Department has approved permit No. 72-16686, you must lower the level of water in the pond to the natural ground surface. This would include breaching any berms surrounding the pond.

You are the watermaster for Water District no. 72-A. This responsibility places an extra burden upon you that you divert and use water within the confines of the law. **If the necessary measuring device and controlling works are not installed by May 25, 2007, please cease all deliveries of water from your pond for beneficial uses and allow the water to free flow away from the pond. Any departure from this instruction will result in swift enforcement action by the Department.**

Mr. and Mrs. Challis  
April 27, 2007  
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Non-compliance with the above may also result in monetary civil penalties of up to \$50,000, pursuant to Section 42-1701B, Idaho Code.

Please contact IDWR if you have any questions or comments.

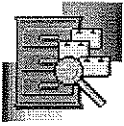
Respectfully,



Gary Spackman  
Administrator, Water Management Division

Enclosure: Idaho Code § 42-701

cc. Robin Wegener  
Gary Chamberlain  
Norm Semanko  
Bob Foster  
Southern Region  
Nick Miller



# Idaho Statutes

TITLE 42  
IRRIGATION AND DRAINAGE -- WATER  
RIGHTS AND RECLAMATION  
CHAPTER 7

HEADGATES AND MEASURING DEVICES

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT PROCEDURE -- REPORT FILING FEE. (1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(2) If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

(5) All appropriators of the public waters of the state of Idaho who are given thirty (30) days' written notice by the director prior to the beginning of the irrigation season but no later than March 15 of any year, shall measure their water diversions and report said diversions annually thereafter on a

form approved by the director of the department of water resources. Such report shall include: a legal description of the point of diversion, the number assigned to each water right diverting from the public waters of the state, the maximum authorized rate of diversion, the maximum rate at which diversions have been made during the reporting period, the total volume diverted during the reporting period, and a description of the physical changes to the diversion works that have been made during the reporting period. The appropriator shall furnish each year the depth to water in any well prior to commencement of pumping, the depth to water during the pumping period, and the pressure in the pipe distribution system during diversion if the well is not free flowing. When the director of the department of water resources determines that any person is in substantial violation of any provision of this section or any rule, permit, condition of approval or order issued or promulgated pursuant to this section, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. Subsections (5) and (6) of this section shall not apply to:

(a) any appropriator or water user with respect to a water right included in an active water district created pursuant to chapter 6, title 42, Idaho Code, the annual report of which meets the reporting requirements of section 42-708, Idaho Code;

(b) any irrigation district or ground water district having shown to the satisfaction of the director that they are currently making and recording sufficient measurements of their diversions with measuring methods acceptable to the director and upon their agreement to provide an annual report of their diversions to the director in substantially the same form as required in section 42-708, Idaho Code; and

(c) any water right included in an active water measurement district created pursuant to this chapter.

(6) The director of the department of water resources shall collect a report processing fee of twenty-five dollars (\$25.00) per diversion required to be reported, including those diversions covered by an agreement in lieu of a measuring device as provided in subsection (2) of this section. Such fee shall be submitted with the annual report of diversions and well data. All such fees received by the department shall be deposited in the water administration account created pursuant to section 42-238a, Idaho Code, for use by the department to collect, analyze and report water use information and to regulate water withdrawal and use.

(7) All domestic uses, as defined in section 42-111, Idaho Code, and all stock watering uses, as defined in section 42-1401A, Idaho Code, shall be exempt from the measuring device installation and maintenance, measuring and reporting requirements of this section.

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