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Robin J. Wegner

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City, State, ZIP+4

Challis, ID 83226

PS Form 3800, June 2002

See Reverse for Instructions



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

*Saxby's copy
H.U.D. 72A file
2006-01-193*

April 27, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

ROBIN J WEGNER
HC 63 BOX 1576
CHALLIS, ID 83226

RE: Illegal Storage Pond

Dear Ms. Wegner:

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 has not been approved. Based on available information, the Department concludes that you are storing water for irrigation and perhaps other purposes. Your pending application seeks a water right for irrigation and irrigation storage.

Your pond is approximately 100 feet wide by 140 feet long, with a maximum depth of six feet. Assuming an average depth of three feet, the pond stores just less than one acre-foot of water. The pond was constructed on an existing slope by forming an approximately 36-inch high berm on the downhill side using soil excavated from the pond interior. The two sources of water currently stored are: 1) ground water entering at locations where the excavation intercepts the ground water table, and 2) surface water inflow from a spring originating on Jack Challis' property and entering your property as an unnamed stream approximately 12 feet from the pond.

You hold a valid, decreed water right (72-16559) from the unnamed stream originating on Mr. Challis' property authorizing the following uses:

- 0.02 cubic feet per second (cfs) for stock watering from 01/01 through 12/31
- 0.06 cfs for irrigation of up to 12 acres from 04/01 through 10/31
- Total diversion authorized is 0.06 cfs

Although you have a right to use water from an unnamed stream, you do not hold a valid water right to store or beneficially use the volume of water currently stored. Your pond is storing spring water in excess of the 24-hour volume limit allowed under your existing right and is also storing groundwater without a water right.

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 a civil enforcement action, which includes 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 describes actions you must take to avoid enforcement activities, associated monetary penalties, and curtailment of use of water by the watermaster.

The Department has the authority to require you to remove or alter the pond until the Department approves a water right permit. These activities could include breaching the berm, backfilling the excavation, and modifying the berm such that the volume of spring water stored does not exceed 0.12 acre-feet (the 24-hr volume of your existing right). 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 this pond has on existing water rights. Instead, the Department feels that, pending issuance or denial of permits for these ponds, compliance should focus on limiting the beneficial uses of the stored water to the quantities authorized by the water rights. Specific activities to satisfy this goal are listed below. Of course, you may voluntarily elect to breach and/or backfill your pond until a permit or water right authorizing the storage is secured, in which case there would no longer be a violation.

Stored water cannot be used for irrigation and stock watering. Spring water can only be used within the limitations of water right 72-16559. Given the current configuration of the pond, which includes an overflow pipe that regulates the storage level, any inflow to the pond from the spring will discharge through the overflow pipe. Although the pond intercepts groundwater, a net diversion of groundwater out the overflow pipe is unlikely given that the natural groundwater levels are at or below the ground surface and the overflow pipe is above the ground surface. Therefore, any outflow from the pond is water from the unnamed stream flowing from the spring. You must do the following:

1. You must not beneficially use any stored water pumped or otherwise taken from the pond. Stored water is any water in excess of that amount which naturally passes the overflow pipe.
2. You must not beneficially use the stored water in the pond. Beneficial uses in the pond include stocking with fish, recreation, aesthetics, etc.
3. Because the pond captures all the water flowing from the springs, and discharges all the captured water through the overflow pipe, water in excess of the flow rate authorized by water right 72-16559, might be used. As a result, **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 watermaster or the Department that will accurately measure the flow you are using for irrigation and stockwater from the outlet pipe; and (2) install a locking control valve or other locking controlling mechanism to allow water in excess of your authorized flow rate stored in your reservoir to spill onto the ground immediately outside of the reservoir berm.** The flow diverted cannot exceed 0.06 cfs total diversion for irrigation and stockwater, and cannot exceed 0.02 cfs for stockwater purposes.
4. You must limit the place of use irrigated to no more than 12 acres, as described in water right 72-16559.

Ms. Wegner
April 27, 2007
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5. At the end of the irrigation season (October 15, 2007), unless permit No. 72-16693 has been approved by the Department, you must breach the berm and reduce the level of water to ground surface.

Because your water use is regulated by a watermaster, the measuring device and controlling works will be under the control of the watermaster for Water District no. 72A. The watermaster, Jack Challis, may adjust the controlling works to insure the flow rate for your water right is not exceeded. **If the necessary measuring device and controlling works are not installed on or before May 25, 2007, the watermaster will shut off all deliveries of water from your pond for beneficial uses and will allow water from the pond to spill next to the berm.**

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.

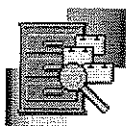
Sincerely,



Gary Spackman
Administrator, Water Management Division

Enclosure: Copy of Idaho Code § 42-701

cc: Jack Challis
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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Search the Idaho Statutes

Available Reference: *Search Instructions*.

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