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June 30, 1994

DELIVERED BY FACSIMILE

DAVID R. TUTHILL, JR., MANAGER  
WESTERN REGION OFFICE  
IDAHO DEPARTMENT OF WATER RESOURCES  
2735 AIRPORT WAY  
BOISE, IDAHO 83705-5082

Re: Request for delivery of water

Dear Mr. Tuthill:

At 11:15 A.M. on June 28, 1994, I visited with Steve Lester in front of my house and requested that two inches of unused Porter Creek water be diverted through my #6.7 priority headgate for the purpose of irrigating my raspberry crop and small pasture. He advised me that Porter Creek Watermaster Hank Berntsen would be making headgate changes and that if there was two inches of unused water available following the changes, I should request that amount from Mr. Berntsen.

At 10 P.M. yesterday, June 29, 1994, I met Mr. Berntsen at the Double Diamond Jackass Creek overflow pipe which was wasting in excess of 200 gpm of water. With the temperature in the high nineties I think you will agree that amount of wasted water is excessive.

Mr. Berntsen advised me that the Double Diamond Payette River pump was forcing the Porter Creek water back out the overflow pipe due to the excessive head created by the 60 h.p. pump. Then he told me he would reduce the quantity of waste by reducing the Porter Creek flow through the #1 priority diversion headgate.

Mr. Berntsen agreed that this would further increase the quantity of unused water flowing past the Double Diamond #1, Oliver Dobson #2 and Arlie Woods #5 priority diversions and being wasted down Porter Creek. He also volunteered that Mr. Woods could not use and did not want any additional water at his #5 diversion, yet he refused to deliver the two inches (.04 cfs) of irrigation water to me under my #6 priority or to deliver any water under my #11 domestic priority.

When I asked why, Mr. Berntsen responded with the following reasons:

1. He said that Mike Fry had asked him several days ago to leave some water in the stream and since there was no water reaching the mouth of Porter Creek he would not give me the two inches. I reminded him that Mike Fry did not have a Porter Creek water right and that transpiration losses reduced the flow down the three miles of

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Porter Creek until it disappeared, but he was adamant that I could not receive any water unless there was a Porter Creek flow into the Payette River.

2. He said that the Department had told him he was not to put any water in the #6/7 pipeline unless Double Diamond was receiving their full water right, therefore I would get none. It was my understanding from our May 25, 1993 meeting that water deliveries would be based on a call to the watermaster providing that such a quantity of unused water was available past the last diversion.

3. He said that when he reduced the excessive Double Diamond flow and waste at Jackass Creek he was going to let it flow downstream through the leaky Oliver-Dobson dam and that I was welcome to use it if it reached my house where my #11 diversion is located. However he still refused to honor my call for two inches for irrigation under my #6 priority, or to deliver the two inches in my pipeline under any of my priorities.

At 7 A.M. this morning, with an ongoing overflow at Jackass Creek, the following Porter Creek water deliveries were made: #4/15 priority - headgate locked fully open with gauge reading 30 inches (.60 cfs); #6/7 - locked fully closed; #1 receiving 1.11 cfs with an estimated 28 inches (.56 cfs) flowing over and/or leaking through the DD dam; #2 locked closed with all of the water (an estimated .50 cfs leaking through the O/D dam; #5 receiving .16 cfs with an estimated .25 cfs leaking through the diversion; and #11 a measured .13 cfs flowing over the unsealed dam by my house.

The flow past my house has increased substantially all morning with a measured .25 cfs passing over my unsealed #11 dam at 1:40 P.M. when Watermaster Berntsen drove by without stopping.

It is my opinion that Mr. Berntsen's refusal to deliver the water I requested is a clear violation of Idaho's Water Policy and of my constitutional right to fair and equal treatment under the Idaho Code. I would appreciate a response from you concerning his reasons for not delivering the water I have requested.

Specifically, why must I pump the two inches of water from my #11 priority diversion which involves substantially more energy consumption and cost than running it through my efficient gravity pipeline?

Thank you for your prompt response.

Sincerely,

George Dovel  
CLT: Dick Eismann