



State of Idaho  
DEPARTMENT OF WATER RESOURCES

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CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

August 24, 1994

Mr. George Dovel  
Rt. 1 Box 61  
Horseshoe Bend, ID 83629

RE: Facsimile Requests for Delivery of Water

Dear Mr. Dovel:

This letter is in response to your two recent facsimile letters requesting delivery of Porter Creek water for your nos. 6, 7 or 11 rights. One letter was sent to this office on August 10 and the second letter was sent to the Director on August 18.

First, I would like to clarify that I reviewed and approved the letter sent by Mr. Lester on August 5, 1994. The responses provided in his letter represent responses from the Regional Office.

**Delivery of Woods Stockwater from the Dovel Pipeline**

The no. 5 priority water right on the stream, in the name of Arlie Woods, is decreed water right no. 65-10771. As you are aware, the rate of flow for irrigation under this right is 0.32 cfs and the rate of flow for stockwater is 0.02 cfs. The Payette River decree states that stockwater is incidental to irrigation, and it is my understanding that Mr. Woods uses some of this water to irrigate the lawn around his home. Thus, during the irrigation season I would interpret Mr. Woods' water right as entitling him to divert enough water (to a maximum of 0.32 cfs) to provide 0.02 cfs of stockwater and water for irrigation, including lawn watering, at his place of use. It is my understanding that historically a diversion of about 0.06 to 0.10 cfs provides sufficient carrying capacity to provide for lawn watering and stockwater uses.

Your suggestion to change the point of diversion for Mr. Woods' water right to the point of intake for your pipeline has merit. However, as previously identified such a change would require the filing of an application. This change can be initiated by Mr. Woods filing either (1) an Application for Transfer, or (2) a Temporary Change Application (copies enclosed). I would be willing to consider some sort of immediate temporary change based on an Application for Transfer if an application is filed and we receive a letter of support signed by all Porter Creek water users. Alternatively, a Temporary Change Application could be filed. As you have indicated, the Department is authorized to issue a temporary change based on this type of application if a drought emergency is declared by the Governor. During 1994 such declarations have been made in several counties in Idaho, but not in Boise County. Drought declaration is normally initiated by a letter request from the county

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commissioners to the Department. If such a declaration is made for Boise County we could consider for approval submittal of a temporary change application by Mr. Woods.

#### **Shutdown of the Dovel Priority No. 6,7,11 Pipeline Headgate**

The closure of your pipeline by the Watermaster on July 30 reflected a call on the water made by Mr. Dean Larson of Double Diamond, Inc. to satisfy his no. 4 water right. Mr. Larson demanded all water in the creek except for enough flow to satisfy the downstream no. 5 priority water right, held by Mr. Woods. The shutdown of your pipe was contingent on the proper sealing of diversions from the creek by Mr. Larson and Mr. Woods. As we discussed during my visit on July 1, 1994, and as I reiterated in my letter dated July 5, 1994, the standard for the sealing of diversions is as follows:

... it appears to be reasonable to require the no. 1 and no. 2 priority diversion dams to divert all but 5 m.i., and to require the no. 5 diversion to divert all remaining flows. In this way, you as a junior water right holder can be assured that downstream diversions of senior water rights are efficient. Accordingly, I directed the Watermaster to ensure that this standard is met unless the senior water right holders can demonstrate that the standard is impractical. The penalty for allowing excessive flows to bypass a diversion is that the Watermaster will curtail the delivery of flow to the diversion until better sealing can be accomplished. Flows curtailed in this manner will be offered sequentially to the next junior priorities.

This guidance has remained unchanged since our discussion and since the letter was written. It is my understanding based on reports from the Watermaster that when the diversions were sealed and equilibrated, the results were found to be acceptable according to this standard. In his August 19 report to this office Mr. Berntsen stated that the creek just below the Woods diversion was damp but not flowing water and the creek is dry as it runs by your house, indicating that little water bypasses the diversions.

#### **Diurnal Creek Fluctuations**

You have indicated that much Porter Creek water has been wasted down the creek since the Watermaster closed your pipeline. We understand that any water that has been available in excess of the flows required by priorities nos. 4 and 5 is due to diurnal fluctuations. Flows that are barely adequate to satisfy the diversion requirements during part of the day might surge during other periods of the day. The difficulty that arises is how to manage these flows so that they are controlled without the need for 24 hour per day surveillance.

Because your pipeline point of diversion is co-located with the diversion for the no. 4 water right at the upper end of the creek, it is difficult to

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develop a situation whereby you can capture excess diurnal fluctuation under your no. 6 priority. To date, it is my understanding that the Watermaster has set the system to best satisfy the no. 4 and 5 priority water rights, and diurnal spill has been allowed to satisfy the no. 9 priority water right as diverted through the no. 1 priority headgate. I would be interested in any suggestions that you have that would enable the Watermaster to improve on this system, where delivery to the no. 6 water right could occur without requiring full time monitoring at the diversion site.

#### **Priorities Within the Dovel Pipeline**

It has been our understanding that the primary use of the 0.04 cfs which you are presently requesting is the watering of your garden. This use would be the no. 11 priority use, which would be junior to Mr. Woods' no. 9 priority use. You have indicated that you desire to call the water for this 0.04 cfs use under the no. 6 priority water right, which has normally been associated with irrigation of your alfalfa fields. Please clarify the relative places of use of these rights, if your intent is to conduct lawn and garden watering through your pipeline under the no. 6 priority water right.

#### **Water District Procedure**

The protocol for water delivery requests remains that the wateruser first contacts the Watermaster. If problems occur in this process, the Regional Office can then be contacted. As you recall, last year we requested that you follow up any verbal contact with the Watermaster with a letter to the Regional Office. The intent of this suggestion was to provide a written record of your water calls should a difference of interpretation be found between any parties.

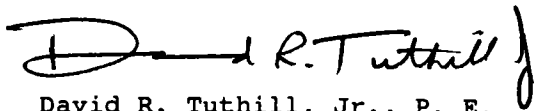
Based on this understanding, we assumed that your facsimiles of August 10 and 18 followed calls by you to the Watermaster. Instead, Mr. Bernsten has informed us that he has not heard from you for more than two weeks. It appears that you by-passed the Watermaster and replaced the water district procedure with facsimile requests made directly to the Department. Once again, we request that you give the district protocol a chance to work. Staff resources do not allow us to always provide immediate responses to your facsimile letters, especially when the water district procedure is not honored.

In response to your request to name all parties responsible for the shutdown of your pipeline in accordance with priority delivery of water on Porter Creek, I accept that responsibility personally. The Watermaster is elected by the waterusers, is appointed by the Director, and receives guidance and direction from this office, for which I am the manager.

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I realize that this is a difficult water year and that all needs cannot always be met. However, I believe that proper delivery of water as outlined above has been occurring based on the information solicited by this office and based on the three on-site visits that we have conducted this year. Reasonable efforts have been made to meet water users' needs within the limits of deliverable water rights. I am willing to further consider any aspect of this letter based on your response. If the data or interpretations reflected herein are erroneous in your view, I invite you to contact me to discuss any aspect more fully.

Sincerely,



David R. Tuthill, Jr., P. E.  
Manager, Western Regional Office

Enclosure: Application for Temporary Transfer form

c: H. Bernsten, Watermaster  
D. Rumsey and D. Larson, Double Diamond  
A. Woods  
S. Lester, N. Young, K. Higginson, IDWR