



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 10, 2001

ORIN HATCH
11240 E RESERVOIR RD
SWANLAKE ID 83281

RE: Stockwater Tap from North Stream Pipeline, Oxford Creek

Dear Mr. Hatch:

The Oxford Creek Watermaster, Phyllis Murphy, has advised me that there have been questions raised again this year regarding your stockwater tap on the north stream pipeline from Oxford Creek. Use of water from this tap appears to be in addition to your six-share decreed allotment for irrigation from the north stream pipe which you are receiving on rotation. Because diversions for stockwater are not included in the Oxford Creek decree, this must be treated as a separate use of water which could require a new water right.

When livestock drink directly from a stream, a water right permit is not required. In situations where it is beneficial or necessary for livestock to be watered away from the stream, a small diversion system may be treated as an instream right, not requiring a water right permit, if it is constructed and operated within specific limitations. ***These diversions may not be used for irrigation.*** In order for your pipeline to fall within this exempt status, you must: 1) File a Notice of Diversion for Instream Stockwater Use with the Department of Water Resources, and 2) construct or modify the pipeline so that it meets the criteria set forth in Idaho Code § 42-113. Failure to do so may result in a charge of making an illegal diversion of water, and the Watermaster will be obligated to close the tap.

A Notice of Diversion for Instream Stockwater Use form is enclosed. Please complete this form immediately and return to IDWR with the required \$25.00 fee. This filing will not be advertised or licensed, but the point of diversion will be added to Department records for tracking purposes. Filing this Notice does not establish an easement or provide permission to tap the pipeline. You must obtain separate easement or permission from the landowner, if necessary.

From Idaho Code § 42-113 (3), following are instream stockwater pipeline criteria:

- (i) The water is diverted from a surface water source to a trough or tank through an enclosed water delivery system;
- (ii) The water delivery system is equipped with an automatic shutoff or flow control mechanism or includes a means for returning unused water to the surface water source through an enclosed delivery system, and the system is designed and constructed to allow the rate of diversion to be measured;
- (iii) The diversion is from a surface water source to which the livestock would otherwise have access and the watering tank or trough is located on land from which the livestock would have access to the surface water source from which the diversion is made;

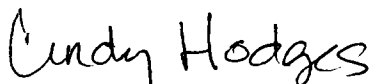
- (iv) The diversion of water out of the stream in this manner does not injure other water rights;
- (v) The use of the water diverted is for watering livestock; and
- (vi) The bed and banks of the source shall not be altered...unless additional work is approved by the director of the department of water resources.

This diversion is under the jurisdiction of the Oxford Creek Watermaster. Upon receipt of a copy of this letter, the Watermaster will inspect the present system for compliance with the above criteria. If the system is satisfactory, the Watermaster will adjust the valve and you may divert the water for stockwater only. If the system is not satisfactory, the Watermaster will close and lock or otherwise disable the valve until the system has been modified. The Watermaster must approve the modified system before the valve is unlocked. If your Notice of Diversion form is not received, or if the diversion is interfering with senior water rights, the Watermaster may also be instructed to close the valve.

Please be advised that tampering with regulated headgates is a misdemeanor. Once the Watermaster has set a valve or headgate, any person who changes it will be subject to prosecution.

If you have any questions about water right permit requirements, stock water system criteria or the Notice of Diversion form, please don't hesitate to contact me in Boise at 208-327-5406, or Ron Carlson at the Eastern Region office at 208-525-7161.

Sincerely,



Cindy Hodges
Sr. Water Resource Agent
Water Distribution Section

cc: Phyllis Murphy, Watermaster
Ron Carlson, IDWR Eastern Region
Stanton Yearsley