



State of Idaho

DEPARTMENT OF WATER RESOURCES

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February 23, 1999

DIRK KEMPTHORNE
GOVERNOR

Randall Budge
PO Box 1391
Pocatello, ID 83204-1391

KARL J. DREHER
DIRECTOR

Re: Avery Matter – Your Correspondence Dated February 9, 1999

Dear Mr. Budge:

Thank you for your letter of February 9 that provided clarification concerning the use of Gordon Avery's shares in the Portneuf Irrigating Company (PIC). Your letter states that the Gordon Avery shares have been assigned to Russ and Teresa Avery. Your letter also states that the Avery's own 90 inches of PIC water which they rotate between two separate parcels of land. You confirmed that water for the second parcel of land is delivered from the Portneuf-Marsh Valley Canal Company (PMV), and that this parcel is not identified as the place of use in either PIC's decreed right or PIC's claim in the Snake River Basin Adjudication (SRBA). Your letter further states that the Avery's believe they have a right to use the PIC shares at the two locations and that this practice has not been objected to by PIC or PMV, as well as the Portneuf River watermaster. Your letter appears to suggest that this matter can be resolved by amending PIC's SRBA claim and getting the consent of both PIC and PMV officials. You also state that the Avery's own 24.5 inches of McCammon Ditch Company (MCD) water. Via a phone message the following week you verified that the 24.5 inches is associated with shares in the PMV, not MCD.

As you know, the reason this matter has come to my attention was a result of the river tour conducted last October. That tour was made upon request by the McCammon Ditch Company (McCammon) and others. The tour was part of an effort to resolve a number of complaints that McCammon had formally filed with IDWR. McCammon has complained to IDWR officials in the past about the delivery of PIC shares in the PMV canal. Until the October tour, IDWR was not aware that this practice involved the rotation of canal shares and expansion of irrigated acreage outside of the PIC service area. Regardless of whether the Portneuf River watermaster consented to this practice or not, neither a state watermaster nor IDWR has authority to approve expansions of irrigated acreage.

In order to resolve this matter properly, PIC must take steps beyond those outlined in your letter. Specifically, PIC must seek an approved water right transfer pursuant to Section 42-222, Idaho Code, if the Avery's are to irrigate the parcel in the SWNE and NWSE of Section 31, T9S, R37E. The transfer can not result in a net expansion of irrigated acres authorized under PIC's original decreed right, 29-00051. In other words, the Avery's may need to purchase or acquire additional PIC shares from other lands and move those shares to the parcel in Section 31 if they plan to continue irrigating both this parcel and the parcel which you described as the "home place".

IDWR intends to direct the Portneuf River watermaster to prohibit the rotation of the Avery PIC shares until such time as a water right transfer is approved which provides a place of use that covers the Avery parcel in Section 31, T9S, R37E.

In a related matter, I plan to request written confirmation from PIC or the appropriate PIC shareholders concerning the place of use of certain other PIC shares that have been moved to the PMV Canal. I had inquired with PIC about these other shares, along with the Avery shares, in my letter of October 23, 1998. It is my understanding based on verbal responses to that letter that these other shares did not involve any changes in the place of use and or expansion of irrigated acreage. However, IDWR still needs written confirmation concerning the actual place of use of these other shares in order to address the ongoing complaints about the use of PIC shares in the PMV Canal.

I also note from your letter that the PIC SRBA claim for right 29-00051 includes about 110 additional acres than what is authorized under that right. You made no mention of any other claims or rights. If this is correct, then PIC may want to consider filing an expansion claim in the SRBA.

Please contact me if you have questions or comments regarding this matter.

Sincerely,



Tim Luke

Cc: Russ and Teresa Avery
Dale Hatch, Pres., PIC
Delores Smith, Sec., PIC
Ervin Gilbert, PMV
Howard Hall, McCammon Ditch Co
Arlin Olson, Watermaster
Southern Region