

File: ND 57-R 2003

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MAY - 1 2003

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From: Connie Brandau 495-2529

Department of Water Resources

April 30, 2002

RE: Violations on Reynolds Creek

These are my notes pertaining to the unauthorized activities under the direction of Owen Orndorff concerning Cottle, Macks and Reynolds Creek water deliveries.

I was called out as Watermaster of Reynolds Creek District 57R on Monday April 14, 2003. My first trip up the creek this year showed that Owen Orndorff, owner of Junayo Ranch LLC, has caused to have constructed, and was continuing the construction of, more water storage facilities on and across the Macks Creek streambed below the Big Macks Creek Reservoir which obstruct the delivery of live flow of Macks and Cottle Creeks. He has had numerous "check dams" constructed across the streambed channels of Reynolds, Macks and Cottle Creeks in various locations where they traverse his property. He has also caused to be constructed a ditch from the Reynolds Creek drainage to the Macks Creek drainage and is transporting live flow water for irrigation and storage on and to lands and facilities with no legal right to do so.

My observations led me to seek direction from the Idaho Department of Water Resources about how I should proceed. The illegal constructions and diversions interfere with my ability to carry out my duties as watermaster in the delivery of live and stored waters of Reynolds Creek and its tributaries. I also informed the elected officers of the Reynolds Creek Dist. 57R of the situation.

On Tuesday morning April 15th I called John Westra at IDWR to apprise him of my problem and to ask if Mr. Orndorff had recently acquired permits for another on stream dam or other constructions on Macks Creek. John said that he didn't think so, but would check for sure. He called me back and we arranged to meet at 1PM to go out on site. He had called Orndorff to inform him that we would be on site.

We met at the Ferry Service and drove up to the Junayo Ranch in his IDWR pickup. We went to the Big Macks Creek Reservoir dam first and from there could see the "new dams" below the reservoir on Macks Creek. I asked John if Owen had permits for any new construction/works and he told me "Not that I am aware of." If he had applied for any permits concerning water they should have been legally noticed and or advertised.

Upon further inspection John and I noted that there is no way for me to regulate the live flow water out of the Macks Creek Reservoir back into Macks Creek and subsequently into Reynolds Creek for delivery into the system other than fillin all three of

the unauthorized structures and letting them spill. I took ten pictures this first day out. Chuck \_\_\_\_\_ was still working on the newest dam today.

On April 16th Richard Brandau and Jerry Hoagland (chariman and Secretary of 57R) discussed what should be done if IDWR won't do anything about Owen Orndorffs violations. Similar issues with Owen have come up in the past and he always seems to "get away with it" ei: dam construction done with Habitat Improvement Project funds which have subsequently and recently been raised; raising of Big Macks Creek Reservoir freeboard without prior authorization, granting of permits after the fact, and stipulations for measuring devises with which Orndorff has never complied (on Cottle Creek and two places on Macks Creek); and now raising all of the smaller dams freeboard with loose fill, creating more storage facilities without authorization, diverting water illegally for use in an unauthorized facility and for use on land for which it does not have a water right (out of Reynolds Creek for use on the Charlie Field off of Macks Creek). We agreed on the following tentative course of action:

- 1) Talk with Dave Tuthill (former Wester Region Manager) to see if we are contacting the right people and if not ask for direction.
- 2) Find out who is in charge of the issues we are seeking clarification on at IDWR - Western Region and/or state office
- 3) Check with Bureau of Reclamation?
- 4) Check with Environmental Protection Agency
- 5) Check with Department of Environmental Quality
- 6) Go to the media
- 7) The Officers of 57R would also like to know if Own is bonded/insured? Because Owens dams are not very stable looking structures, who has the liability if they go out?
- 8) If none of the above mentioned agencies will take remedial action pertaining to Owen Orndorff will 57R patrons have to instigate a lawsuit to have the violations addressed. If so who would it be against?

I went out again on April 19th. Owen still has Chuck working in/on Macks Creek below the main reservoir on the third dam.

I finally heard back from Dave Tuthill on Tuesday April 22nd. He left a message on my answering machine that he had been out of the office and the afternoon of the 23rd when he returned would be a good time for me to try to reach him. I called about 3:30 PM to visit with him. Let me note that when I was first elected watermaster on Reynolds Creek, Dave was manager of the IDWR Western Region. He was always kind and understanding and if I had questions he could and would point me in the right direction to get the answer. I was calling him as a friend and past "mentor". I briefly explained my situation and when I told Dave that I hadn't heard back from John Westra and wasn't having much luck "catching him in the office" he told me that Gary Spackman is now the Western Region Manager and would be a good person to visit with.

I called Spackman at 4 PM the same day and we had a 35 minute conversation about the situation out here. He had discussed it with Westra... but said they didn't know

what they were going to do yet. I got pretty worked up and vocal about that. Gary said he and John did agree that Orndorffs activities were 1) an illegal use of water 2) he had no right to/for construction 3) it was a violation of stream channel alteration - which is the function of the Army Corp of Engineers. Gary then said that it was their intent to determine with the Army Corp of Engineers what is happening and will probably issue a "notice of violation". He also said that it was his understanding that the construction of these new dams was finished... it is not and they are still being worked on, there are new piles of dirt and the dam is now even higher than when John and I were out on the 15th Gary then told me that he hadn't gotten the same sense of urgency from John Westra that he was getting from me. He also wondered if Owen was building these dams in ignorance of the law." John (and I) both informed him that it was more like "in flagrant violation of the law" since he has had to go through the permitting process twice already, once to raise the East Reservoir dam and once to build the Big Macks Creek Reservoir. I told Gary that my statement to John was that if you give Owen an inch he will take a kilometer, because he thinks that you are too stupid to know the difference. It is my opinion, because of Owen's past history of unauthorized construction, if he isn't stopped firmly and decisively NOW he will just keep on keeping on. Gary said that I needed to "understand the bureaucratic decision making process" and that it took time. Then he said that he and John had talked about letting Owen go back and get the "right permits" for this ongoing construction and apply them in retrospect. That is when I started losing it and got a little hot (according to Rich Brandau who was listening in on the conversation). I told Gary that I had talked to the 57R officials about this matter and if IDWR didn't want to or wouldn't pursue the matter they were ready to "jump into legal aspects." When he asked "A lawsuit?" I answered maybe and Rich mouthed yes. I told Gary Spackman that I was seeking direction from IDWR but if they didn't want to take some immediate action I was prepared to go to EPA, DEQ or perhaps Army Corp of Engineers. He asked what I meant by immediate action and I told him at the least a cease and desist order to stop construction now. He was going to talk to Westra.

Westra called me at 7:30 AM on April 24 to let me know they are issuing a "notice of violation" to Owen. The Corp will be out to look at the constructions. He said "They will be removed." I asked him who I should contact if construction continues. He said it will stop because of the notice. I asked again who I should contact when it starts again and he told me to contact IDWR if that should happen.

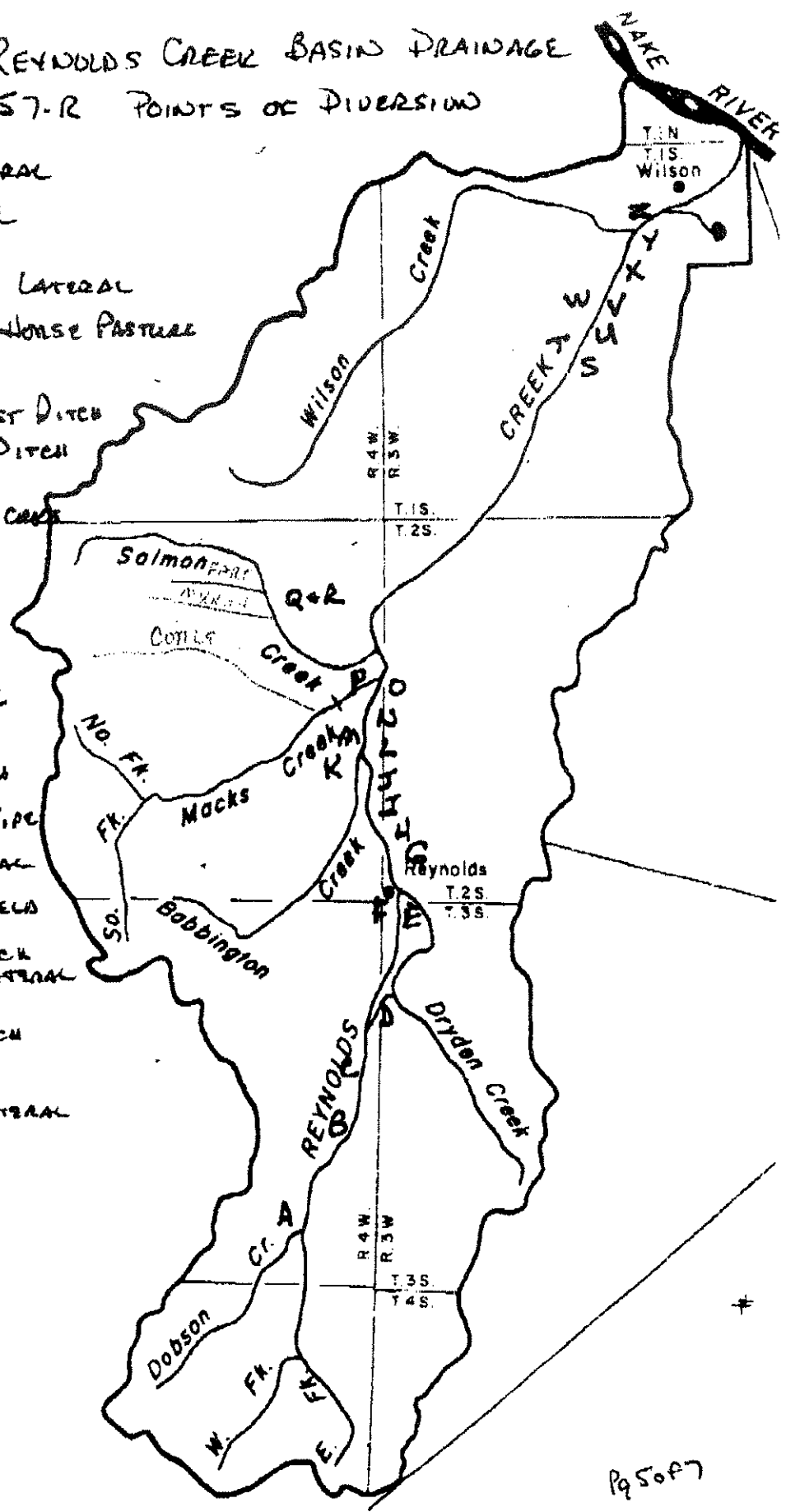
John called back about 10AM to let me know that he and a gentleman from the Army Corp of Engineers, Gene Gibson, were going on site today and wanted to know if I could be there too. We met at the Ferry Service at 12 noon and were back by 3 PM. After looking over the system Mr. Gibson decided that only the third and newest dam on Macks Creek and the stream channel alteration in Reynolds Creek were under the jurisdiction of the Army Corp of Engineers. He determined that the increase in the height of the "seep storage" and the "diversion" dams and the subsequent instability and lack of integrity in construction remain the jurisdiction of IDWR. I asked both Gene Gibson and John Westra how I was to deliver the live flow Macks Creek water through the Junayo Ranch/Orndorff dams. Neither they nor I could see how it could be done. They

suggested that I contact Gary Spackman about water delivery. They ~~both~~ told me not to deliver live flow water through the Macks Creek system at this time... which is in direct violation to my oath of office. Mr. Gibson said that he would have Greg Martinez from Army Corp of Engineers meet and/or visit with Own Orndorff to explain the violations to him. Mr. Gibson denied my request to be present at that meeting.

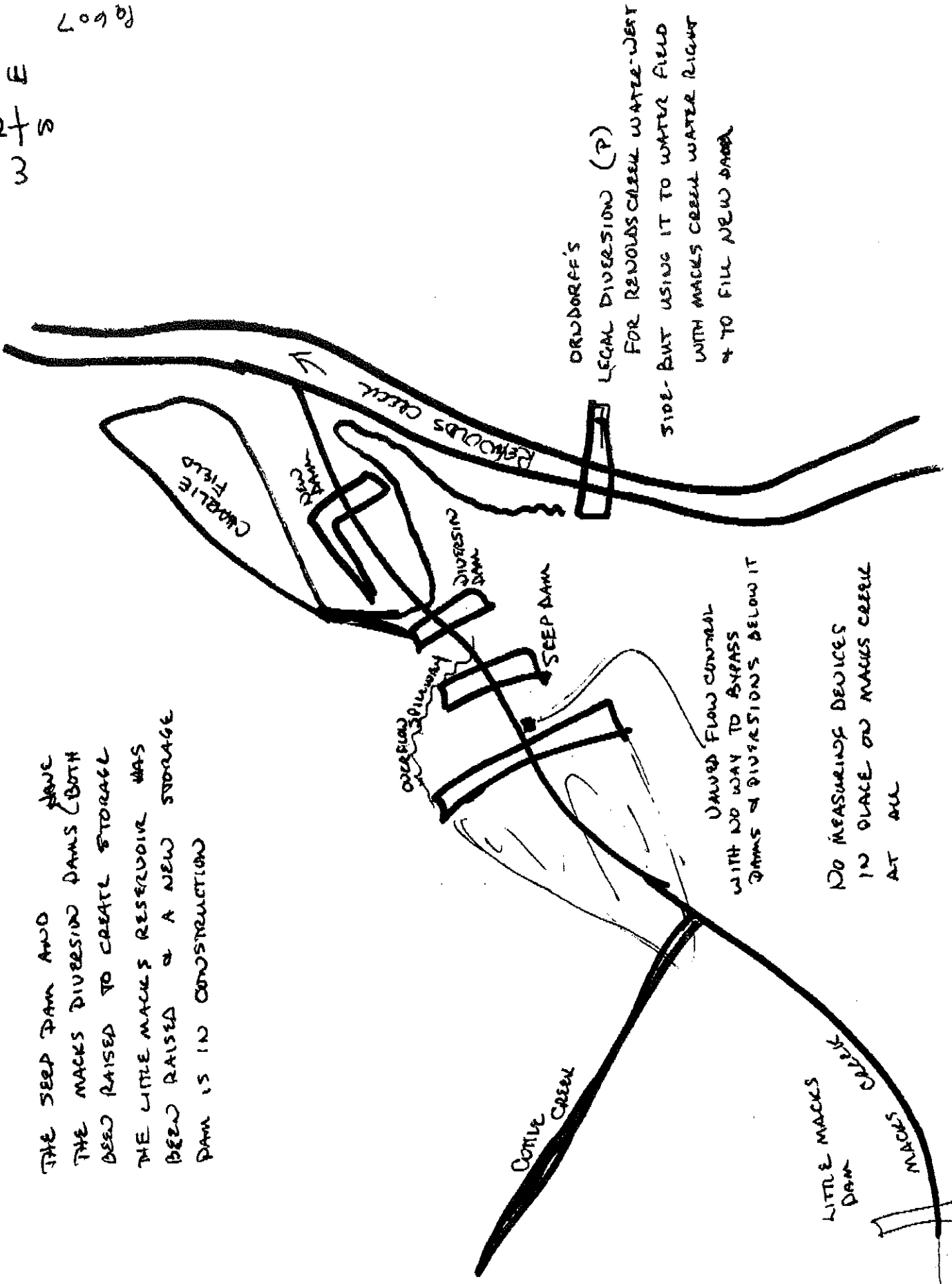
To date April 30, 2003 I have not heard back from either IDWR or ACE.

# REYNOLDS CREEK BASIN DRAINAGE S7-R POINTS OF DIVERSION

- 2 - 2: LAST DITCH - LATERAL
- Y = YOUNG O FOTE
- X = H. BRANDAU
- W = WEST REYNOLDS LATERAL
- V = BRANDAU FARM - HORSE PASTURE
- U = R.S.D LATERAL
- T = R. BRANDAU - WEST DITCH
- S = R. BRANDAU - EAST DITCH
- Q+R = BOSTON & McKEE  
SALMON & COYLL CREEK
- P = JUNANO WEST
- O = BASS - PACK RAY
- N = JUNANO - EAST
- M = BASS - BELOW DARD
- L = BASS - EAST HOUSE
- K = 7 HI - BRIDGE
- J = 7 HI - HOUSE DITCH
- I = 7 HI - MURPHY RD. PIPE
- H = RAM FIELD - LATERAL
- G = HOOKS - TIMOTHY FIELD
- F = COMMUNITY DITCH LATERAL
- E = JACA - EAST
- D = HOOKS - BENCH DITCH
- C = JACA - WEST
- B = HIGH DITCH LATERAL
- A = 7 HI - DOBSON



THE SEEP DAM AND  
THE MACKS DIVERSION DAMS (BOTH  
BEING RAISED TO CREATE STORAGE  
THE LITTLE MACKS RESERVOIR WAS  
BEING RAISED & A NEW STORAGE  
DAM IS IN CONSTRUCTION



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## INDIVIDUALS

WATER RIGHTS 57R

UPDATE 3/05/96

NAME	RIGHT #	PRIORITY DT	PR#	AMT CFS	CUMUL	PT D
JUNAYO-LOWER	57-00248	1871-06-01	3	.60	.60	NP
JUNAYO-LOWER	57-00252	1879-06-01	8	.76	1.36	NP
JUNAYO-LOWER	57-00249	1884-06-01	11	.60	1.96	NP
JUNAYO-LOWER	57-01070	1911-09-21	37	.10	2.06	NP
JUNAYO-LOWER	57-01073	1911-09-21	37	.52	2.58	NP
JUNAYO-LOWER	57-01074	1911-09-21	37	.28	2.86	NP
JUNAYO-LOWER	57-02296	1966-08-10	59	.90		TRANSFER RT
JUNAYO-LOWER	57-02325	1966-08-10	59	4.60		STORAGE RT
JUNAYO-LOWER	57-07040	1970-02-24	60	4.60		STORAGE RT
JUNAYO-MACKS CRK	57-00262	1889-06-01	22	.90	.90	MACK
JUNAYO-MACKS CRK	57-02085	1915-04-30	47	1.36	2.26	MACK
JUNAYO-MACKS CRK	57-07583	1994-01-14				STORAGE RT
JUNAYO-UPPER	57-00250	1872-06-01	4	1.28	1.28	FH
JUNAYO-UPPER	57-00251	1905-06-01	30	.12	1.40	FH
JUNAYO-UPPER	57-01075	1911-09-21	37	.24	1.64	FH