

Stanton, Jim

From: Merritt, Allen
Sent: Friday, August 27, 2004 3:50 PM
To: Merritt, Allen; Homan, John; Blau, Terry; Ballou, Erv; Luke, Tim; Saxton, Glen
Cc: Skinner, Corey; Stanton, Jim
Subject: RE: Mulberry violation



NOV Mulberry.doc

here is my new version of the nov

-----Original Message-----

From: Merritt, Allen
Sent: Friday, August 27, 2004 3:07 PM
To: Homan, John; Blau, Terry; Ballou, Erv; Luke, Tim; Saxton, Glen
Cc: Skinner, Corey; Stanton, Jim
Subject: Mulberry violation

I again received a call from the Stricker Ranch folks. They are desperate to get water. Please consider the following.

Today I have talked to a representative of the State of Idaho Historical Society (Milan Kovach 334-2844) He indicates they have some of the oldest rights on the creek and need water. (Reference SRBA claims A47-129B and A47-130B in the name of the State of Idaho) I told him we are considering issuing an NOV to Mr. Mulberry but it may take time. I suggested he talk to an attorney general. I asked if they have been paying the WD47-O for watermaster services...He said he thought the "Friends of the Stricker Ranch" have been. He said he had talked to Chuck Helman several years ago about this. He thinks they are.

I called Cindy Blakely (current watermaster) and she said she does not go down as far as the Stricker Ranch. She delivers all the old Stricker rights to the Mulberry headgate. (Reference SRBA claims A47-129, A47-130 in the name of Ken Mulberry). She does not think State of Idaho or Friends of Stricker Ranch are billed. I looked at 2003 WD file and State of Idaho or Friends of Stricker Ranch are not included.

I have attempted to call Ken Mulberry at: 733-5062I left message on machine....no response.
cell 280-5062 number from watermaster but this number not in service
423-5556 no answer

Here is the memo created by Corey for the recent investigation. << File: August 26 Mulberry Memo.doc >>

Here is my draft NOV << File: NOV Mulberry.doc >>

What I think has been happening is that Rock Creek has historically gained water below the authorized Mulberry diversion leaving enough water in the creek for operation of the Stricker Ranch Pump for the Historical Society up until this year when Mulberry developed another diversion and completely dammed off the creek.

I know Mulberry has violated the SCA act in the past and he is currently involved in restoration.

Please review and comment.

Thanks

Allen

August 27, 2004

Ken Mulberry
PO Box H
Kimberly ID 83341

CERTIFIED MAIL

**RE: Notice of Violation / Order to Cease and Desist Diversion of Water
Violations of Idaho Code §§ 42-351, 42-3803 and 42-1701B**

Dear Mr. Mulberry:

The Idaho Department of Water Resources (IDWR) has determined that you are diverting water without a water right in violation of Idaho Code Section 42-351 and in violation of Idaho's Stream Protection Act, Idaho Code Section 42-3801 et seq. The violations are associated with a constructed diversion dam blocking the flow of Rock Creek within the SENWNW S23, T11S, R18E, B.M. The diversion dam delivers water to a pond where a pump diverts water into a pipeline network. A review of IDWR records finds no authorized diversion from Rock Creek at this location. The above-described actions constitute violations of Idaho Code Sections 42-351 and 42-3803.

Under Idaho Code, Section 42-1701B, the director of IDWR may commence an administrative enforcement action to obtain restoration, mitigation and a civil penalty for irrigation uses not to exceed \$300.00 annually for each acre irrigated, in whole or in part, by the illegal use or diversion to remedy the damage caused by the violation. Additionally, the director may seek restoration, mitigation and a civil penalty not to exceed \$10,000.00 to remedy the damage caused by the violation of the Stream Protection Act.

Therefore, pursuant to Idaho Code, Section 42-1701B, IDWR requires that the following restoration **and mitigation** measure(s) be completed.

1. All diversion of water at this location shall immediately cease. The pump shut off and the diversion dam breached to allow flow in Rock Creek to continue downstream. The dam shall be breached in such a manner as not to cause silt to be flushed down stream.
2. All remaining material placed in the stream channel left after breaching of the dam shall be removed by October 1, 2004.
3. The stream shall be restored to its former natural meander pattern and revegetated with a native grasses, forbs, and woody perennial vegetation suited to the site, and

approved by the local U S D A Natural Resources Conservation Service, to insure its stability.

The director of IDWR seeks an agreed civil penalty in the amount of \$10,000 for the illegal diversion of water and violation of the stream channel protection act. Of this \$10,000; \$5000 is due by October 1, 2004 and \$5000 of the above referenced penalty will be suspended pending the completion of the agreed upon mitigation and restoration. If the revegetation and restoration of the disturbed area is satisfactory to IDWR within one year, the violation will be considered resolved and no additional monies due.

If you object to any provision in this notice, you have the opportunity to schedule a compliance conference to discuss the violation with IDWR. Your written request must be received at this office within 14 days of receipt this notice. Failure to comply with the requirements of this notice will be cause for IDWR to initiate a civil enforcement action through the Attorney General in district court.

Please contact Terry Blau of my staff at 208-736-3033 if you have any questions regarding this matter.

Sincerely,

Allen D. Merritt, P.E.
Manager, Southern Regional Office

ADM: tb

cc: John Homan, Ervin Ballou, Terry Blau IDFG (Jer.), IDEQ (TF), C of E(Boise)