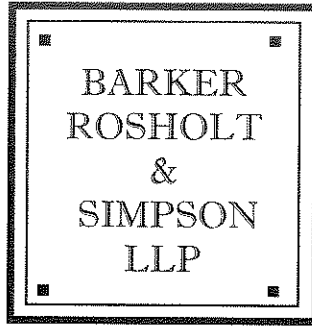


MAY 13 2004

Department of Water Resources  
Southern Region

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May 12, 2004

Mr. Allen Merritt  
Regional Manager, Southern Region  
Idaho Department of Water Resources  
1341 Fillmore St., Suite 200  
Twin Falls, Idaho 83301-3380

**RE: Spring Creek Water Rights (Basin 45)**

Dear Allen:

This firm represents Earl Warthen on various water right matters. This letter concerns unlawful water diversions out of Spring Creek and commingled sources in Basin 45 (tributary to Howell Creek) that have been occurring this spring and at other times in the past.

Mr. Warthen has filed two claims in the Snake River Basin Adjudication (SRBA), water right claim nos. 45-10502 and 45-13669, that cover certain irrigation uses out of Spring Creek and other commingled sources, including wastewater off of his neighbor Dick Anderson's property. He has relied upon this water to irrigate his property for the past thirty-four years as well have others before him. Despite Mr. Warthen's rights, Norman Smyer, and possibly others, have been diverting and using the same water this past spring to Mr. Warthen's detriment. Mr. Warthen has notified the Basin 45 Watermaster of these diversions and uses.

Rather than initiate an administrative proceeding before the Department, Mr. Warthen intends to preserve his rights and file any necessary objections to other competing claims in the SRBA. By this letter Mr. Warthen would like to clarify that he objects to these disputed diversions and uses that have been occurring this spring. Mr. Warthen intends to work with the Department, including clearing up any errors in the Department's preliminary recommendations for his water rights to ensure efficiency for future water right administration.

Mr. Warthen would like the Department to keep this letter for future reference to note his objection to the diversion and use made by Mr. Smyer this spring and other times in the past. In addition, Mr. Warthen would like to work with the Department and other water users in the area to make sure the water rights out of Spring Creek and the commingled sources in the area are

Mr. Allen Merritt  
May 12, 2004  
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properly defined. Please call me at 733-0700 if you have any questions or need any additional information on this matter.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. L. Thompson', with a long horizontal flourish extending to the right.

Travis L. Thompson

cc: Earl Warthen  
Norman Semanko  
Mr. Kelly Christensen, IDWR  
Mr. Norman Smyer  
Mr. Kevin Smyer  
Mr. Dick Anderson  
Mr. Don Gunderson, Watermaster (Basin 45)