

Merritt, Allen

From: Merritt, Allen
Sent: Tuesday, August 02, 2005 11:03 AM
To: 'gundy@safelink.net'
Cc: Luke, Tim; Stanton, Jim; Christensen, Kelly
Subject: FW: Marsh Creek Water District 45-F

Don,

As watermaster you are authorized to curtail illegal water uses. Your letter is a good start to get the ball rolling. I would suggest that you talk with each pump owner and find out if they have a water right or what water right authorizes the pump. (I'm not sure of what list you are working with. As you know your area has recently been issued partial decrees so some of the records are in transition.) If they cannot produce a record of a valid right then tell them to remove the pump from the creek immediately. If they don't then lock it down. If you cannot lock it down then inform IDWR and we will issue an NOV and civil penalties will result. If it is a matter of measuring device and control works then inform them what needs to be installed. Again if it cannot be worked out then IDWR may need to be consulted and we may need to issue an order and if not complied with then an NOV may need to be issued.

Allen

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

From: KiGuns Rancho Por La Vida II [mailto:gundy@safelink.net]
Sent: Monday, August 01, 2005 11:58 AM
To: Merritt, Allen
Cc: Blau, Terry
Subject: Marsh Creek Water District 45-F

Al,

I have legal complaints from users that has filed complaints with me, since they have not received there call this season and the individuals that have pumps are illegally utilizing water that should be theres, if I had the water, would be going to them.

I am asking for authorization to mail this letter out to all those individuals with pumps in the creek. I have already disconnected the electricity to Mark Homan, which has a very elaborate system in the creek. He has never been authorized water from the area that he has the pump. His legal diversion is at "LF" (Barrett Ditch diversion) 45-521 and a 6/01/1877 right. I also have with the same right and diversion point four (4) other pumps, they are Allen Clark, Mark Anderson, Shirley Clark and Kevin Clark.

*Respectively submitted;
 Don G. Gunderson,
 Watermaster 45F
 Marsh Creek Water District*

Marsh Creek Water District 45-F

August 01, 2005

TO: Water User, District 45F

Subject: Notice State Code Water Violation

RE: Pumps, located with-in Marsh Creek/Land Creek/Howell Creek

This notice is going out to all individuals who have a pump located within the creek channel and right of way of creek beds. There is no Decreed right that is valid for running a pump from the creek unless it is at a valid diversion point. As of *July 15, 2005* there has been no valid decree right for water other than the following:

- | | | |
|---------------------------------|--------|--------------------------|
| • Marsh Creek decree #'s | 45-307 | Priority date: 4/01/1873 |
| | 281 | 4/30/1873 |
| | 282 | 4/30/1874 |
| | 308 | 3/01/1875 |
| • Land Creek | 45-258 | 3/01/1875 |
| | 283 | |
| • Howell Creek | 45-284 | 4/01/1875 |

Therefore, the following Idaho Law will be enforced if the existence of miss appropriation of water.

As per Idaho code 42-351/352; IT SHALL BE ILLEGAL TO DIVERT ANY WATER FROM A NATURAL WATER COURSE IF THE WATER RIGHT FOR THAT PROPERTY IS NOT ABLE TO BE FULFILLED BY WATER DISTRICT # 45F WATER MASTER.

This letter is a formal Notice that the STATE LAW UNDER THIS IDAHO CODE #42-351-352 States THAT ANY PERSON WHO KNOWINGLY VIOLATES THIS CODE CAN BE FINED UP TO \$100.00 PER CALENDAR DAY FOR THIS VIOLATION. Water District #45F Water Master will be checking on Marsh Creek and it's Tributaries for any such violations and the Water District will turn such violators into the Idaho Department of Water Resources for action under the above code.

This will be the only Notice of Warning you will receive. If you have any questions, please give me a call 673-5359. Pumps will be pulled from the creeks.

Attachment 'A':

42-701, Maintenance by appropriators – Procedure upon failure to maintain.
The appropriators or users of any public waters of the state of Idaho shall maintain to the

satisfaction of the department of water resources suitable headgates and controlling works at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point and such appropriator shall construct and maintain, when required by the department, a rating flume or other measuring device at such point as is most practical in such canal or ditch for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said ditch from the stream. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources: provided, that should any appropriator or user of the public waters of the state of Idaho neglect or refuse to construct or maintain such headgates, controlling works, or measuring devices, upon receiving ten (10) days' notice from the department of water resources within which to begin to remedy such defects as exists in accordance with said notice, then the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water claimed by such appropriator or user until he does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist: provided, that such appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

Note:

42-701 was discussed at length during the last annual Marsh Creek Water District 45F meeting that was held March 7, 2005 by those members present and the watermaster was so, instructed to enforce 42-701. As for the individuals with the pumps in the creek, not one has called for water this season or any other season but are using! Therefore, they are breaking the laws that are set forth with a valid water right and or a valid diversion point within the state of Idaho.

Respectively;

Don G. Gunderson,
Watermaster 45F