

COLEMAN, RITCHIE & ROBERTSON

ATTORNEYS AT LAW  
156 SECOND AVE. WEST  
P.O. BOX 525  
TWIN FALLS, IDAHO 83303-0525

JOHN R. COLEMAN  
JOHN S. RITCHIE  
THOMAS M. ROBERTSON

TELEPHONE (208) 734-1224

FAX (208) 734-3983

October 17, 1996

Karl Dreher, Director  
Idaho Department of Water Resources  
1301 North Orchard Street  
Boise, ID 83706

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Department of Water Resources  
Eastern Region

Dear Mr. Dreher:

I am writing this letter to you on behalf of our client, Mr. Richard Kendall of Twin Falls, Idaho. Mr. Kendall is the owner of approximately 21 acres of land in the NW $\frac{1}{4}$  of Section 6, Township 8 North, Range 21 East, Boise Meridian in Custer County, Idaho. This property is on the north side of Big Lost River. The river is the south boundary of the property of Mr. Kendall.

There is diversion from the river in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 1, Township 8 North, Range 21 East, Boise Meridian into what is commonly known as the Ingram Ditch. This diversion from the river into the Ingram Ditch is upstream approximately one-fourth mile from the property of Mr. Kendall. The Ingram Ditch crosses the north portion of Mr. Kendall's property for approximately 700 feet.

There is no structure of any kind in the river or at the diversion from the river to control the flow of water into the Ingram Ditch. There are no structures at the diversion from the river to screen logs or other debris from entering the ditch.

To gain access to the property of Mr. Kendall there is a road across BLM ground to the north of his property, and he has a right to use that road to enter his property at the northwest corner of his property. To get onto his property, Mr. Kendall contracted with Mr. Walt Johnson of Trail Creek Construction Company to install adequate culverts in the Ingram Ditch to carry the water rights diverted through that ditch.

Mr. Johnson and Trail Creek Construction Company installed two 36 inch steel culverts side by side at a 1% grade. The culverts are 20 feet in length. These culverts are designed to carry 3,900 inches of water. Before Mr. Johnson installed the culverts, he determined that the rights in the Ingram Ditch totalled 801 inches of water. During high water in 1996, Mr. Kendall personally kept the culverts free from debris, and the volume of water was so great that it flooded his property above the

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culverts. Thus, there was diverted from the river, water considerably in excess of 3,900 inches.

Downstream on the Ingram Ditch approximately 75 feet from where it enters the Kendall property, there is a headgate capable of controlling the flow of water in the Ingram Ditch from that point downstream in the ditch. Also at that point there is a channel that carries excess water back to the river. This channel runs across the entire Kendall property and causes considerable flooding and damage to the property.

The rights in the Ingram Ditch, according to the Watermaster, Mr. Doug Rosenkrance, Water District 34, and your Department, are as follows:

<u>Water Right No.</u>	<u>Owner and Address</u>	<u>Amount</u>
34-00455	Lynn D. Reno, Bakersfield, CA	1.6 cfs
34-00151	Lynn D. Reno, Bakersfield, CA	.4 cfs
34-00220	Lynn D. Reno, Bakersfield, CA	1.1 cfs
34-00221	Lynn D. Reno, Bakersfield, CA	.5 cfs
34-00222	Lynn D. Reno, Bakersfield, CA	.5 cfs
34-00456	Lynn D. Reno, Bakersfield, CA	.8 cfs
34-00152	Lynn D. Reno, Bakersfield, CA	.4 cfs
34-00770	Clint & Esther Bitton, Mackey, ID	1.6 cfs
34-00772	Clint & Esther Bitton, Mackey, ID	1.6 cfs
34-00771	Clint & Esther Bitton, Mackey, ID	3.22 cfs

The total of these rights is 11.72 cfs or 586 inches. The records of the Department also show 34-00567 in the name of Dicky Livestock, Inc., Mackey, Idaho, for .8 cfs in the Ingram Ditch. Mr. Rosenkrance, however, does not show this right in this ditch. The filing on this right shows the point of diversion as being in Range 22 East, whereas the Ingram Ditch is in Range 21 East.

The Ingram Ditch, from the point it leaves the river, is a wild ditch after until it enters the property of Mr. Kendall. During high water it causes considerable flooding from the point it leaves the river until it leaves the property of Mr. Kendall. The overflow channel also causes considerable flooding and damage. All of this flooding and damage could be avoided if there was a control device at the point the water is taken from the river.

It is our understanding of law that the parties diverting water from a stream have the duty and responsibility to have adequate devices to control the flow of water into their ditch and that these control devices must be at the point of diversion from the river, not one-fourth mile downstream.

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Huge amounts of debris flow in the river during high water, and with this uncontrolled diversion, huge amounts of debris come down the Ingram Ditch further causing flooding and damage.

Mr. Kendall has requested that the water users and the watermaster control this situation, but his requests have not been honored. It appears to us that under the law, further uncontrolled diversions into this ditch should not be allowed and that the owners of these rights should be required to place adequate devices at the point of diversion from the river to control the flow of water and eliminate the debris in the ditch.

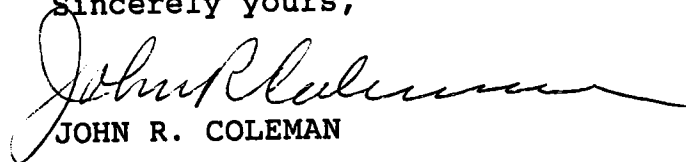
We have numerous pictures to document this problem, and we would be happy to meet with the appropriate personnel from your office to discuss this matter and arrive at a satisfactory solution. We recognize the right of the water users to have the full flow of their rights when water is available. The exercise of that right, however, is not a license to flood and damage the property through which their ditch is located.

We feel that this matter should be called to your attention since you and your Department have the statutory duty to monitor and police the diversion of waters from the streams of Idaho.

We request that further diversion of these rights not be allowed until this situation is corrected.

We look forward to hearing from you regarding this matter.

Sincerely yours,



JOHN R. COLEMAN

JRC/jlk

cc: Rick Kendall  
591 Ballingrude Drive  
Twin Falls, ID 83301

Ernie Carlson  
Idaho Department of Water Resources  
900 North Skyline  
Idaho Falls, ID 83402

Doug Rosenkrance, Watermaster  
P. O. Box 53  
Mackey, ID 83251