

June 21, 2007

Bob Shaffer
Watermaster
Water District No 34
PO Box 53
Mackay ID 83251-0053

RE: Congdon Springs

Dear Bob:

This letter is intended to provide guidance on the administration of water rights from Congdon Springs and Congdon Springs Creek.

My understanding is historically there was no regulation by the watermaster on Congdon Springs Creek downstream from where it siphons under the Burnett Ditch. The two water rights from Congdon Springs Creek diverted below the siphon were combined and rotated under a cooperative verbal agreement between the two users. Water from the Burnett Ditch injected into Congdon Springs Creek below the siphon did not require watermaster regulation because it was delivered to the individual users through the ditch intercepting the Congdon Springs Creek channel. The water users on the ditch had responsibility for dividing the water. Above the siphon there is a Parshall Flume used by the watermaster to measure water being diverted from Congdon Springs and Congdon Springs Creek into the Burnett Ditch. But there has no device to measure the flow in Congdon Springs and Congdon Springs Creek to assist the watermaster in distributing the water between the water users with diversion above the siphon and below the siphon.

Changes in the location and method of water delivery being sought by John Lezamiz potentially will require the watermaster to begin regulation on Congdon Springs Creek below the siphon. In recent weeks, Tom Bassista, Stream Channel Protection Specialist, and myself have visited this area in response to activity by John Lezamiz and enquiries from individuals with water rights delivered through Congdon Springs Creek.

Based on our observations Tom and I concluded Congdon Springs Creek is a natural channel extending from the springs down stream to a point almost in the center of the SWNW S32 T07N R25E where a ditch intercepts the channel. Section 42-105, Idaho Code, states in part:

The water that a person is entitled to divert by reason of a valid water right may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. The use of natural waterways to commingle and reclaim water shall be subject at all times to the supervision and control of the director of the department of water resources and shall be subject to the regulation of the watermaster within an established water district. The amounts of water turned into or diverted from all natural waterways are subject to the requirement of measurement and reporting

Since water turned into Congdon Springs Creek is subject to regulation of the watermaster, appropriate measuring devices and control structures must be installed. Furthermore before Mr. Lezamiz can divert his decreed water rights from Congdon Springs and the Big Lost River at the pumps he installed on the Congdon Springs Creek channel, IDWR and the Big Lost River Irrigation District must approve the changes proposed by him for delivery of his water and changes in the place of use. Should the Big Lost River Irrigation District turn storage water into Congdon Springs Creek it is responsible for administering delivery of this water to the appropriate water users.

Mr. Lezamiz recently filed transfer applications with IDWR. These applications propose modifying his water rights so they are consistent with the changes he has already initiated. However, to receive his water prior to approval of the applications Mr. Lezamiz must continue diverting his rights in the same manner previously practiced by Vernon Woodbury.

Mr. Lezamiz has also installed a diversion structure in Congdon Springs Creek below the siphon where historically Vernon Woodbury diverted his Congdon Springs water right. Unfortunately the elevation of the overflow into Congdon Springs Creek is too high and as a result water is being impounded behind the structure. The structure needs to be modified so there is no impoundment behind it when Mr. Lezamiz is not diverting his Congdon Springs water and only a minimal impoundment when water is being diverted at that location.

The issue of appropriate head gates and measuring devices will be addressed during the administrative process for considering the transfer applications.

Respectfully yours,

Ernest Carlsen
Water Resource Program Manager

cc: John Lezamiz
Jim Rindfleisch
Dave Nelson
Loy Pehrson
Byron Pehrson
Tom Bassista
Tim Luke