

April 13<sup>th</sup>, 2006

To: John Westra  
From: Chris Welcker

On April 7<sup>th</sup> or thereabouts, Erv Ballou and I visited Bennett Creek and looked at Dilworth Dam, the Union Pacific railroad culvert, and Kathy Robert's property. On that day she gave me a copy of a letter dated December 1, 1993 from IDWR regarding several water issues on Bennett Creek. She said that a neighbor had witnessed a Union Pacific crew cleaning out the culvert in the afternoon, the day of the highest water on her property. Erv was fairly certain there had been no permit for this work or notification by the railroad.

I gave her my card and later that afternoon she called me and told me that there had been a previous lawsuit against the railroad filed by Mary Bernt, a neighbor, regarding the culvert. As a result of the lawsuit, the railroad agreed to clean out the culvert, but failed to do so. Kathy gave me her phone number 366-2346 and FAX number 366-2286.



State of Idaho  
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190  
FAX (208) 334-2348

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

December 1, 1993

Distribution: See Attached List

RE: Diversion Dam for Permit No. 61-07466 in the Names of M.J.,  
Orin and LeGrand Dilworth -- **Order for Removal**

Dear Interested Party:

On November 5, 1993, the Department conducted an on-site review of the above-referenced matter with the Dilworths and other neighboring landowners. The following conclusions were drawn at that time:

1. The culverts under the railroad grade will need to be re-drilled by Union Pacific, in accordance with their earlier commitment. The existing culverts are almost fully plugged and a future high-runoff, high-sediment-load event in Bennett Creek could result in complete blockage of the creek to the detriment of downstream waterusers.

2. The Bennett Creek diversion structure installed by the Dilworths is a violation of the provisions of water right permit no. 61-7466, for which a condition of approval reads as follows:

Use of water under this permit may be affected by an agreement between the protestant and the applicant.

In this case, the agreement is one signed by the applicant and the protestants dated August 9, 1990, which states as follows:

No dam will be constructed for the diversion works. Instead, diversion will be conducted from a sump next to the creek.

Therefore, the dam was not authorized by the water right permit and is in violation of both the Idaho Stream Protection Act and the water appropriation rules.

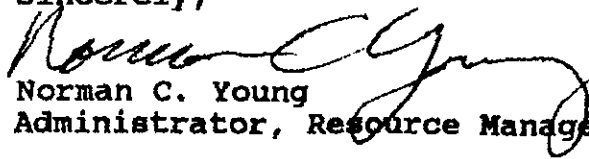
At the conclusion of the on-site review Mr. Tuthill indicated that the Department would consult with the U.S. Corps of Engineers prior to responding further, because the Corps asserts jurisdiction on waterways of the U.S. under the Clean Water Act. This consultation has been conducted, and the Corps has advised the Department that the dam is considered to be a violation of Section 404 of the Clean Water Act. This Department is authorized to act as the lead agency in resolving the violation.

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Accordingly, this letter will serve as notice to the Dilworths that the dam must be completely removed no later than December 31, 1993 by removing all material that is within the mean high water mark of the channel prior to the unauthorized alteration.

If the Dilworths wish to contest the provisions of this notice, they may submit a request for hearing to this office within fifteen days of the date this letter is mailed.

Sincerely,



Norman C. Young  
Administrator, Resource Management Division

Enclosure: List of Interested Parties

JOHN BERNT  
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HAMMETT ID 83627

KING HILL IRRIG DIST  
PO BOX 428  
KING HILL ID 83633

VIOLA A ALLISON  
STAR RT BOX 62  
HAMMETT ID 83627

GREG MARTINEZ  
US CORPS OF ENG  
HC 33 BOX 1020  
BOISE ID 83706

DARYL KECK  
STAR RT BOX 27  
HAMMETT ID 83627

JOHN WESTRA  
ID DEPT OF WATER RESOURCES  
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1313 1ST N  
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ID DEPT OF WATER RESOURCES  
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HOWARD RIGGS WATERMASTER  
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W LEROY MEYER  
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M J DILWORTH  
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