



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

Jim Lake 7/2
WD 74 file 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 29, 2004

Lynn Herbst
P.O. Box 21
Tendoy, ID 83468

Re: Regulation of Water Right no. 74-741

Dear Mr. Herbst:

On April 28, 2004, Rick Sager (Sager), Watermaster for Water District No. 74, Lemhi River, sent the Idaho Department of Water Resources (IDWR) a letter discussing his attempts to regulate water right no. 74-741. I understand that you are an owner of the water right. Sager's letter states that diversion of water under water right no. 74-741 must be curtailed to satisfy downstream water rights. Sager stated that, when he attempted to regulate the water right, you told him to stay off your property "now and forever."

Idaho Code § 42-607 instructs the watermaster of a water district to "distribute the waters of the public stream, streams or water supply, comprising a water district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole, or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates of the ditches or other facilities for diversion of water from such stream, streams or water supply, when in times of scarcity of water it is necessary to do so in order to supply the prior rights of others in such stream or water supply . . ."

The watermaster has the authority to go onto the lands of another to regulate the diversions of water from the Lemhi River.

I reviewed the records of IDWR related to water right 74-741. All of the records dating back to the Lemhi Adjudication document a priority date of January 8, 1908. The water right authorizes diversion of water from the Lemhi River. Some of the documents refer to an exchange from an unnamed source.

The Lemhi River at the point of diversion for your water right is within Water District No. 74. Rick Sager, Watermaster for Water District No. 74, regulates the water rights of the Lemhi River. If the watermaster is unable to deliver water rights bearing priority dates that are earlier than January 8, 1908, the watermaster must curtail diversion of your water right. Even if you are diverting water from another water source in an exchange, water can only be diverted

Lynn Herbst
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from the other source if water can be delivered to you from the Lemhi River based on the priority of your water right.

Despite the harshness of curtailment, I've instructed Rick Sager to shut off your diversion of water under water right no. 74-741 until a January 8, 1908 water right can be delivered from the Lemhi River. You should allow Sager access to regulate the diversion of your water. If necessary, law enforcement can escort Rick Sager onto your property. I trust, however, that you will allow Sager to do his job.

If you own other water rights that are deliverable, I ask that you present the information about the water rights to the watermaster. Sager, perhaps in concert with Bob Foster of Salmon, should review any additional water rights you may own and determine the deliverability of the rights. After their review, if questions linger about the water rights, they should be referred to this office.

Respectfully,



Gary Spackman
Chief, Water Allocation Bureau

cc. Bob Foster
Rick Sager
Tim Luke

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 74-741 V1

Total Acres: 143
STOCKWATER same as IRRIGATION

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Remarks:

1. Place of Use This right authorizes the irrigation of 143.1 total acres.
- Irrigation

Comments:

1. dsmith 3/29/2004 Recommendation
Comment: Based on Lemhi Decree

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag:
State or Federal: S
Owner Name Connector: OR
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Total Acres: 143

Post-it* Fax Note	7671	Date	4/28/04	# of pages	2
To	CARY Sprackman		From	Bob Foster	
Co./Dept.			Co.		
Phone #			Phone #		
Fax #			Fax #		

APRIL-28-2004

On APRIL 25, 2004 I NOTIFIED LYNN HERBST THAT I WAS CUTTING BACK PRIORITY DATES TO 1907 AND HE WAS LOSING HIS 1908 WATER. ON APRIL 26 I CALLED MR. HERBST TO LET HIM KNOW THAT I WAS TURNING HIM BACK AND ASK IF HE HAD CURTAILED FLOODING & SPRINKLING AND HE STATED NO BECAUSE I CAN NOT CONTROL WASTE WATER. THE WASTE WATER IS OFF OF ANOTHER DECREE WITH A 1873 PRIORITY, ON OPPOSITE SIDES OF AGENCY CR. THIS HAS BEEN AN ISSUE WITH HERBST FOR THE LAST 12 YEARS. HE HAS STATED THAT I HAVE NO RIGHT TO BE ON HIS PROPERTY AND STAY OFF THAT I AM ONLY PICKING ON HIM.

I ASKED BOB FOSTER TO CHECK INTO THIS MATTER. I WAS TOLD THAT GLEN SARTON AND ROXAANE BROWN FROM THE IDWR CALLED MR HERBST THAT I HAD AUTHORITY TO GO AND REGULATE THIS WATER.

AT approximately 4:00 pm on April 27 I arrived at said ditch and was confronted by Lynn and was told to stay off his property now and forever. He stated that the water had never been called on before and that I was only picking on him. I stated that I had tried for the last three years with the same response but had just found out that I had the right and was just doing my job.

Rather than further problems I let him call IDWR.

The water in question is
74-741 1908 priority

Rick Jager
Water-master Dist 74

Lynn HERBST
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Tendoy, Id 83468
Phone # (208) 756-2584