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Department of Water Resources
Eastern Region

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Law Offices

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July 6, 2004

SENT VIA FACSIMILE TRANSMISSION: 208-327-7866

Idaho Department of Water Resources
Attn: Tim Luke, Manager, Water Distribution Section
1301 North Orchard Street
P. O. Box 83720
Boise, ID 83706

**RE: Jimmie Dowton - Preliminary Order to Cease and Desist Diversion of Water from
Pahsimeroi River**

Dear Mr. Luke:

We represent Jimmie and Maria Dowton and are formally responding to your "Preliminary Order to Cease and Desist Diversion of water from Pahsimeroi River" dated June 21, 2004, and received by Jim on July 1, 2004. Jim just received a call stating that one of your representatives along with a representative of Fish & Game would be at the property tomorrow "to shut down the headgate." He is totally surprised by your "rush to judgment" and that it is based on false information. We suspect this is motivated by Brooke Coleman, whom you sent a copy of your Order via his attorney Jim Speck. Coleman trespassed on the Dowton property to obtain the photographs which you have relied upon for your false conclusions.

If we need to formally appeal, this is it. We strongly protest and object to what we view as high-handed and oppressive tactics that if carried forward would be a serious violation of due process rights of our clients. This would be a big mistake on your part. You have provided Jim two days notice. There is no fairness to this.

We will only summarize our objections to the false factual underpinnings of your Order:

1. The channel which you contend is an irrigation ditch is in reality a natural watercourse that carried highwater on that alternate course and eventually returned the water to the River. It could properly be called a slough.
2. The structure is not an irrigation water diversion. It was designed to reduce the flow of the River through that natural channel at flood stage to prevent it from flooding out the farm ground of Downtons through which it runs. Jimmie and Maria have been married 45 years. Jim states the present structure was in place before they were married. Before the structure was installed rocks in the channel were used to partially accomplish that purpose. Some of those rocks can still be observed there.
3. About three years ago Jim did install a culvert in a place to cross the slough so they can farm on both sides of the slough. In that particular structure they can back-up the water when they are working the hay ground down stream from the structure. This provides some benefit to minimize the sub-water interfering with haying. This is not a major factor, to avoid damage to the farming, but it really should be a plus for fish and waterfowl. Upstream from the culvert the resulting small pond benefits wildlife.
4. Jim does not divert any water from the slough for irrigation purposes. He has established water rights for his farming and ranching property.

Bob Foster of IDWR wrote a letter on June 3, 2004 which Jim received on June 29, 2004. Jim states they had fully previously responded to concerns of IDWR providing the true facts as summarized above. Jim is surprised that Bob Foster has apparently failed to understand the full and true facts, and as a result, his report is not accurate.

Jimmie and Maria are long-time residents of the area and have led exemplary lives including the holding of many positions of honor and trust in the community. They are very unhappy to have IDWR be responsible for a radio broadcast on the local station, three days before Jim received your order, portraying him as a bad guy who was breaking the law and who may be subjected to severe penalties.

We respectfully demand the right of a fair hearing to present the true facts.

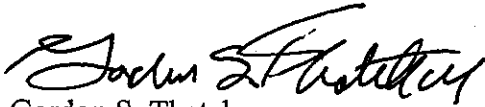
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The father of Brooke Coleman has an interest in property across the River. Jim wonders if this action was in spite and retaliation for Jim objecting to the father and a guest of the father trespassing on Jim's land some months ago. The father had later apologized for this. Jim says he has been very open to grant fisherman the right of access across his property when they respectfully requested permission. Jim also understands Brooke Coleman has broadcast on his environmental web-site his complaints about this situation, so this may be motivated by his desire to further his own personal agenda.

Sincerely,



Gordon S. Thatcher

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PC: Bob Foster, IDWR Salmon Field Office
Ron Carlson, IDWR Eastern Regional Manager
Jim Martiny, Water District 73 Watermaster
Tom Curet, Idaho Department of Fish and Game, Salmon
John Homan, Idaho Deputy Attorney General
Jim Speck, Attorney for Brooke Coleman
Jimmie Dowton