



State of Idaho
DEPARTMENT OF WATER RESOURCES
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PHILIP E. BATT
GOVERNOR

December 5, 1997

Douglas A. Schrank
1148 E 2900 S
Hagerman, ID 83332

RE: Letter of Complain

Table with 2 columns: To, From, Co./Dept., Co., Phone #, Fax #. Includes handwritten entries: To Tim Luke, From Allen Newitt, # of pages 4.

IER

Dear Mr. Schrank:

Our office has received your letter of complaint regarding the delivery of spring waters (Spring Creek tributary to Billingsley Creek) diverted within NE 1/4 NE 1/4 NW 1/4, Section 31, Twp.07S, Rge.14E, B.M. among various users. The resolution of these types of conflicts is within the responsibility of the elected watermaster for the water district 36-A. The watermaster, in turn, is under the direction and control of the director of the department of water resources.

Idaho Code §42-602 states in part:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho code, shall be accomplished by watermasters as provided in this chapter and supervised by the director.

Idaho Code §42-607 states in part:

It shall be the duty of said watermaster 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 so to do in order to supply the prior rights of others in such stream or water supply...

In your letter you indicate that some of the water users'

diversions lack measuring devices and the watermaster lacks the proper equipment to make measurements. Please understand that it is the responsibility of water users to install and maintain measuring devices and control works for use by the watermaster at their points of diversion.

Idaho Code §42-701 states in part:

(1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to §42-311, §42-350 and §42-351, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

The department will work with the watermaster to assist him in getting the necessary measuring devices and control works installed by the water users in the district so that he can accomplish his duty.

In your letter you indicate that the Musser diversion may be diverting more water than the rights allow. You appear to base this conclusion on Snake River Basin Adjudication (SRBA) records. Please understand that although there are several water rates or amounts reflected in the SRBA process, the statutes provide that administration of rights be based on the final decree; or in special cases, on an interim administration order by the district court.

Idaho Code §42-1413 states in part:

(2) Upon entry of a final decree, the director shall administer the water rights by distributing water in accordance with the final decree and with title 42, Idaho Code.

Idaho Code §42-1417 states in part:

(1) The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code:

- (a) in accordance with the director's report or as modified by the court's order;
- (b) in accordance with applicable partial decree(s) for water rights acquired under state law;

(2) The district court may enter the order only:

- (a) upon a motion by a party;
- (b) after notice by the moving party by mail to the director and each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order; and
- (c) upon a determination by the court, after hearing, that the interim administration of water rights in accordance with the report, or as the report is modified by the court's order, and in accordance with any partial decree(s), is reasonably necessary to protect senior water rights.

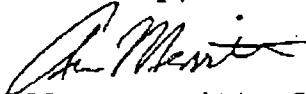
Until the SRBA results in a final decree or the court directs interim administration, the delivery must be based on the prior existing water rights records (decrees, licenses, permits). In the case of Musser, the record indicates they may have portions of old decreed rights 37-00177 and 37-00122 which evidence their use. They have claimed this use in the SRBA under claim A36-10293 at a rate of 1.10 cfs. The director's report recommendation to the court for this claim is contained in 36-10293 which recommends 0.88 cfs. To date, the recommendation has not been objected to by any party. Absent objection to this recommendation, I must assume that the 0.88 cfs amount will be partially decreed by the SRBA court and then a final decree in the same amount will be issued by the SRBA court. Please note that Tim Luke with the department has assisted

several users in the Hagerman valley in recent years in measuring their diversions. I have talked to Tim and he indicated that he measured the Musser pump on September 25, 1995 with a portable ultrasonic meter and found the discharge to be 1.0 cfs during which time all the sprinklers were running on the lands being irrigated.

By copy of this letter to Mr. Erwin, watermaster, I extend the offer for the department staff to work with him or his successor to prompt the water users to install adequate measuring devices and control works. For now, the delivery of rights in the district is to be based on existing records (pre-SRBA).

If you or Mr. Erwin have questions or would like to meet at the diversion to discuss this matter further, please feel free to contact this office or contact Tim Luke (327-7864).

Sincerely,



Allen Merritt, PE
Southern Region Manager

CC: Frank Erwin, watermaster of 36-A
Tim Musser
Tim Luke, Norm Young - IDWR