



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 20, 2010

Jay Busby
2352 N Apple Ln
Pocatello, ID 83201

Re: Your Correspondence of May 5, 2010 Regarding Water District 29-D Assessment of Water Right 29-276B

Dear Mr. Busby,

I have reviewed your correspondence concerning your water right assessment in the new Water District 29-D. I am forwarding a copy of your letter to the watermaster, Marshall Wheatley. Mr. Wheatley will contact you to arrange a visit of your property to which the water right is appurtenant. As you suggest, Mr. Wheatley will inspect the water right property and document the extent of any water use under your water right.

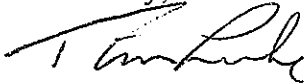
I understand that many water users in the new water district are concerned with the need to pay an assessment when one was not required for many years. However, Idaho law requires the Idaho Department of Water Resources (Department) to establish water districts after rights have been adjudicated in a general adjudication. Water rights in the Portneuf River basin were decreed by the Fifth District Court of Idaho about five to six years ago pursuant to the Snake River Basin Adjudication. The Department has addressed a number of complaints regarding water rights and water use on the Portneuf River and tributaries over recent years and determined that there was a general need for a water district in the Lower Portneuf River area. Further, a water district was at one time created specifically for the Mink Creek drainage but had not been active for many years.

Your letter indicates that you have two wells that essentially provide all of your water needs. Ground water right records on file at the Department show that there is one ground water right license covering your property. The license, identified as right no. 29-7923, authorizes domestic water use for up to six homes and has a priority date of February 27, 1990. The right is owned by Apple Acres Well No. 2, c/o of Jay Busby. Although the right does not explicitly authorize use of ground water for irrigation purposes, the maximum volume allowed under the right is probably sufficient to cover outside home irrigation use of up to one-half acre per lot. The water right license field exam conducted in 1996 documented the use of one well. My inspection of your property description and recent aerial photos suggests that you may indeed be irrigating up to 1 acre around your home along Mink Creek. Please be aware that irrigation from the well may exceed the limits authorized by the ground water license.

You may have several options to consider with respect to your water right and the water district assessment. One option you may consider is abandoning your Mink Creek water right if there is no use of water under the right and you do not wish to pay the water district assessment in this or subsequent years. Abandonment of the Mink Creek right however will prohibit you from further or future diversion of water from the creek unless you obtain another right from the creek. As previously stated, you may be irrigating more area than allowed by your ground water right and therefore may need to use the Mink Creek right and source in order to bring your total irrigated area in to compliance with your water rights. Please note your Mink Creek right bear a 1907 priority date, which is a fairly senior right in your area and obviously a much better priority than your 1990 ground water license.

Again, Mr. Wheatley will contact you to inspect your property and any diversion system from Mink Creek. You may discuss these issues further with the watermaster or contact me directly after the watermaster has made his visit. By copy of this letter, I am directing the water district to allow you some additional time in which to submit your assessment in case you do wish to proceed with abandoning your Mink Creek water right. I suggest the district extend your assessment deadline to July 1, 2010. Please be aware that the water district assessment is limited only to the Mink Creek right and does not apply to your ground water right.

Sincerely,



Tim Luke
Water Distribution

Cc: Marshall Wheatley, Water District 29-D Watermaster
Ethlene Rock, Water District 29-D Treasurer