



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

July 30, 2010

Scott L. Campbell
Moffat, Thomas, Barrett, Rock & Fields
Post Office Box 829
Boise, Idaho 83701

Re: Response to Petition for Water Rights Administration and Complaint for
Removal of Watermaster dated July 6, 2010

Dear Mr. Campbell:

On July 6, 2010, you petitioned the Idaho Department of Water Resources ("Department" or "IDWR") requesting water administration on Worm Creek in Water District 13-A and requesting removal of the watermaster.

Petition for Water Rights Administration

Your petition for water rights administration requested the following:

1. Conduct a contested case proceeding under Idaho Department of Water Resources' Rules of Procedure;
2. Administer water rights in compliance with the Worm Creek Decree and Idaho law;
3. Order immediate termination of illegal water diversions and use;
4. Conduct continuing supervision of water administration in Water District 13A;
5. Retain jurisdiction of this matter for a sufficient period of to assure compliance with the Worm Creek Decree and the laws of the state of Idaho;
6. Issue notices of violations to all water rights who divert and use water in a manner which does not follow all the elements of the water rights;
7. Seek judicial orders in those cases where water right owners fail to comply with notices of violation issued by the Director; and
8. Provide such other relief to the Petitioners as the Director deems appropriate under the circumstances of this matter after a full administrative hearing, conducted by the Director himself.

The Department will not create a contested case and will not schedule a hearing on the broader issue of water rights administration. The Department will initiate several individual administrative actions, each of which may provide appropriate opportunities for formal proceedings. In taking this approach, the Department recognizes that administration of water

rights on Worm Creek has been lacking. IDWR delayed issuance of guidance to the watermaster on this matter pending completion of an inventory of diversions in the drainage. Based on your identification of issues and the Department's completed inventory, the Department will undertake the following detailed actions for administration of water rights in Water District 13-A:

1. The Department will issue an order by September 1, 2010 requiring installation of measuring devices and controlling works to all water users in Water District 13-A (Cub River and Worm Creek drainages) with diversion structures lacking such devices. The order will require installation of properly functioning measuring devices and lockable controlling works before the commencement of irrigation water deliveries in 2011. The order will also address measurement requirements for comingled use of natural channels and diversion of water to storage during the non-irrigation season. We believe delaying implementation until 2011 is appropriate because the 2010 irrigation season is more than half complete. Failure to comply with IDWR's order requiring the installation of measuring devices and controlling works may result in the issuance of a Notice of Violation to the water user.
2. Over the next 30 days, the Department will send correspondence or Pending Notices of Violation (PNOV) to those water right holders who appear to be using water without valid water rights or in a manner that does not conform to their recorded water rights. Notices will not be sent to users or right holders who may have already filed a water right transfer to correct any inconsistencies between their recorded rights and their actual water use. Water users receiving a PNOV must immediately contact the Department to confirm, deny or modify the Department's understanding of their water uses and rights. The Department will issue Notices of Violation and Cease and Desist Orders to right holders who are clearly using water without valid water rights or in excess of valid water rights. The Department will issue and resolve all Notice of Violations in accordance with the provisions of Section 42-1701B, Idaho Code. Water users receiving either Pending Notices of Violation and/or Notices of Violation may file water right transfer applications or make other filings with the Department as may be necessary to bring their use of water into compliance with Idaho law. The initiation of water right transfers or other applications with the Department will set the stage for contested cases, should you disagree with the action proposed.
3. IDWR will send correspondence to all Worm Creek decree right holders by September 1, 2010 notifying them that Worm Creek and tributaries are included in Water District 13-A pursuant to the Department's Order dated February 25, 1983. The notice will advise the users that their water rights are subject to regulation by the watermaster of Water District 13-A and assessments from the water district. Separate notice will be sent to Worm Creek decree right holders at least 21 days before the next annual meeting providing notice of the date, time, location and purpose of the annual water district meeting.
4. IDWR will send formal correspondence to the Water District 13-A watermaster by August 9, 2010, requesting the water district to include Worm Creek measurement diversion data in the 2010 annual water district reports. The correspondence will outline measurement and reporting requirements for 2010 and subsequent reporting years.

5. IDWR will maintain supervision of this matter and the watermaster during the time required for the water users and the water district to comply with all Department orders and requirements described herein.

Complaint for Removal of Watermaster

Your petition requests the department to conduct a hearing to remove the current watermaster because the watermaster has failed to properly administer water rights within the basin. Before the Department conducts a hearing or proceeds with any further investigation, please provide specific information as to why you or your clients believe the watermaster has failed to properly perform his duties. Please also address whether you believe resolution of the issues addressed above will cure any alleged failures. The other water users in the district should be given an opportunity to understand and respond to your specific allegations against the watermaster before the Department conducts a hearing and completes its investigation.

Sincerely,



Gary Spackman
Interim Director

cc: Preston Whitney Irrigation Co.
Cub River Irrigation Co.
Preston Whitney Reservoir Co.
Rob Harris, Attorney for Preston-Whitney Irrigation Co.
Randall Budge, Attorney for Cub River Irrigation Co.
Troy Foster, WD13-A Watermaster
James Cefalo, IDWR Easter Region