



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

February 1, 2011

**Re: Pending Notice of Violation – Failure to Maintain Measuring Devices and Head Gates
on Diversions from Patterson Creek, Water District 73**

Dear Water User,

Water right records on file at the Idaho Department of Water Resources ("IDWR") indicate that you are the current owner of record of one or more water rights authorizing the diversion of water from Patterson Creek, tributary to the Pahsimeroi River in Water District 73. IDWR staff inspected head gates and measuring devices on Patterson Creek with the water district watermaster last fall, including that portion of the stream also known as Patterson Big Spring Creek. IDWR found some diversions on the creek lack adequate measuring devices and head gates.

IDWR issued a notice in April of 2002 reminding water users of water district resolutions adopted in both 2001 and 2002 requiring installation of measuring devices and head gates. IDWR issued an order in November of 2002 requiring installation of head gates and measuring devices for all diversions in Water District 73. IDWR issued a similar order to Water District 73 water users in 1992.

IDWR finds that some diversions from Patterson Creek in Water District 73 lack adequate measuring devices and/or head gates, and other diversions in which measuring devices and/or head gates require some maintenance. Attachment A of this notice identifies those Patterson Creek diversions for which measuring devices and/or head gates do not exist, are inadequate, or are in need of maintenance.

Holders of water rights whose names and addresses are listed on Attachment B of this notice must install adequate measuring devices and head gates on their diversions from Patterson Creek, or correct maintenance deficiencies, on or before water is diverted for irrigation purposes this year. IDWR asks for your full cooperation concerning this matter. Pursuant to Section 42-1701, Idaho Code, water right holders who neglect to comply with notices and orders requiring installation of measuring devices and controlling works may be subject to the administrative enforcement actions provided by Section 42-1701B, Idaho Code. Enforcement actions may include the issuance of Notices of Violation and Cease and Desist Orders, as well as possible civil penalties.

Please contact Tim Luke, IDWR, at 208-287-4959 if you have questions or need assistance concerning this matter.

Respectfully,

Tim Luke

Cc: Ted O'Neal, Water District 73 Watermaster
IDWR Eastern Regional Office

ATTACHMENT A

PATTERSON CREEK DIVERSIONS NEEDING MEASURING DEVICES AND/OR HEAD GATES, OR MAINTENANCE OF MEASURING DEVICES AND HEAD GATES

- Patterson Creek – Circle Pi Diversion (ditch heading just east/upstream of county road)
Owners as per water rights: Harley Wallis, Norman Wallis
Owners/users as per watermaster: Circle Pi, Wallis
Head gate: Gate provides adequate control, is lockable and in good condition.
Measuring device: 4 ft. Cippoletti weir. Recommend weir crest be re-set to be straight and level (noticed slight bow in crest). Sloping sides of weir are wooden and should be fitted with sharp metal edges or angle iron. Note that the Circle Pi SRBA recommended water rights point of diversion (POD) legal description is shown as the NWNWNW Section 26 T14N R23E, or the same location as the Bergman Ditch heading that is located just upstream, but the correct location for the Circle Pi rights is in the NENENE Section 27, which is the POD/ditch heading that is shared with Wallis.
- Patterson Creek – Whitworth Ditch Diversion (heading at culvert under county road)
Owners as per water rights: Scott Whitworth, M2 Technical Services (formerly Gerrish)
Owners/users as per watermaster: Scott Whitworth, M2 Technical (Gerrish)
Water diverted to ditch from road culvert via gravel push-up berm. Gravel dam is re-set each spring. Old non-operable head gate located in ditch about 50 to 75 yards downstream (flow probably goes around gate). Measuring device is wooden weir box just below old head gate. Weir lacks sharp crest and sides; weir crest is non-standard length (3 ft, 9 inches).
Recommend installation of adequate head gate in ditch for proper control and to minimize or avoid diversion of entire remaining creek flow at this location. Overflow head gate or structure could be installed if creek is bermed at culvert. Measuring device should be replaced or improved to standard measuring device conditions and dimensions. IDWR directs watermaster to discontinue delivery of water to ditch unless adequate controlling works and measuring device is installed. Ditch must be bermed or blocked off to prevent water to ditch if devices are not installed.
- Patterson Creek – Lee Watson water right 73-2151 (POD = NWNE Sec 23, 14N 23E)
Did not visit this diversion; diversion not used per watermaster. Previous inventory by IDWR and BLM confirmed no use at this location (note SRBA water right decree date is 3/12/2010, priority date is 6/23/1959).
- Patterson Creek – Ted O'Neal Diversion
User as per watermaster & water rights: Ted O'Neal (right 73-12080)
Head gate/Diversion: Diversion/check structure is wooden dam and boards with plastic tarp that checks water to two small ditches, one ditch on each side of creek. Ditches do not have separate head gates. Water right is 1963 priority and should be limited to high flow or early/late season conditions. Additional locking control gates are recommended for each ditch.
Measuring device: Pre-fabricated ramped flumes on each ditch; flume was pulled from south ditch late in season so it could be re-set in the spring.

- Big Creek Ranch Ditch Diversion from spring channel tributary to Patterson Creek
Users as per watermaster and water rights: Big Creek Ranch LLC (formerly owned by Sulphur Ck Ranches)
Head gate: Head gate is steel gate in concrete structure that provides adequate control, can be locked and in good condition. Note that head gate is located on spring channel that is tributary to Patterson Creek. Head gate diverts water from spring channel to place of use located to the west about $\frac{3}{4}$ mi. Watermaster required owner to trench a portion of the spring channel back to Patterson Creek since channel apparently had been blocked off at some point within past few years. Note that actual head gate location is in 14N 22E Sec 16 SWSENE but water right POD is in NWNESE of same section (actual GPS head gate location is about 115 ft. northeast of water right POD).
Measuring device: No adequate measuring device installed. Measuring device must be installed before water can be delivered.
- Thompson Ditch from Patterson Big Spring Creek (PBSC-9 Thompson Ditch)
Users as per water rights: Martiny, Moen Ranches, Scott Whitworth
Head gate: Gate provides adequate control, is lockable and in good condition.
Measuring device: No measuring device installed, but observed that a ramped flume was sitting on the ditch bank. A rectangular orifice plate was also observed on the ditch bank near the head gate. The watermaster reported that the flume did not work because ditch was too flat and flow too slow. Orifice potentially will be installed in head gate. Owners need to advise watermaster and IDWR on a plan for measuring device installation.
- Patterson Big Spring Ck # 6 (PBSC-6)
User as per watermaster and water rights: Jimmy Martiny
Head gate: New diversion dam and head gate box installed over past year, provides adequate control, is lockable and in excellent condition.
Measuring device: No measuring device installed or observed. Owners need to advise watermaster and IDWR on a plan for measuring device installation.
- Patterson Big Spring Creek # 5 (PBSC-5)
Watermaster advised that this ditch is abandoned or no longer used. However, this location is a point of diversion description for various rights owned by Jimmy Martiny including 73-85, 73-12156, 12157, 12158, 12159, 12160 & 12161 (these rights have two additional points of diversion, PBSC-4 and PBSC-6). Ditch did appear to be grown in. A steel slide gate with lockable turn screw control was installed at ditch heading, no measuring device found or observed.
- Patterson Big Spring Creek # 4 (PBSC-4)
User as per water rights: Jimmy Martiny
Head gate: Steel frame box at head of ditch with screw gate provides adequate and lockable control, in good condition.
Measuring device: Ramped flume was installed in ditch but was pulled out of ditch at end of season as per watermaster. Watermaster reports that flume was working. Flume needs to be re-set in ditch.

- Patterson Big Spring Creek #3A

User/owner as per water rights: Big Springs Creek Ranch

Head gate: Steel slide gate with lockable turn screw for control set in steel diversion box at head of ditch. Head gate in good condition.

Measuring device: No measuring device observed.

Watermaster stated that this ditch is seldom used and head gate almost always shut.

Watermaster has not observed water diverted in ditch for some time although a small amount of water was running through the ditch on date of visit (10/27/2010) and turning a fish screen in ditch downstream of head gate. Land owner and former watermaster Jimmy Martiny was present at time of inspection and confirmed that ditch is seldom used.

Note: Patterson Big Spring Creek Diversions 1, 2 and 3 were not visited in 2010 but will be inspected this spring. Other ditches inspected that had adequate measuring devices and controlling works included Missouri Ditch (PBSC-8), Patterson Creek 4 (Bergman diversion and ditch), and Patterson Creek 3 (Miller diversion and ditch).

ATTACHMENT B

CIRCLE PI LLC
HC 62 BOX 2295
MAY ID 83253

HARLEY WALLIS
2057 PAHSIMEROI RD
MAY ID 83253

NORMAN WALLIS
1971 PAHSIMEROI RD
MAY ID 83253

SCOTT WHITWORTH
PO BOX 147
MAY ID 83253

M2 TECHNICAL SERVICES
4715 E PINE GLEN LN
MEAD WA 99021

TED O'NEAL
81 FUREY LN
MAY ID 83253

BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM ID 83340

JIM MARTINY
83 HOOPER LN
MAY ID 83253

LINDA MARTINY
7878 WILDE RD
CONCRETE WA 98237

PEGGY MARTINY
667 N BIRCH CRK RD
CORVALLIS MT 59828

VIRGINIA MARTINY
159 HOOPER LN
MAY ID 83253

D & K MOEN RANCH LLC
811 PAHSIMEROI RD
MAY ID 83253

BIG SPRINGS CRK RANC LLC
7 W MAIN ST STE 202
BOZEMAN MT 59715

Roberts, Christine

From: Luke, Tim
Sent: Tuesday, February 01, 2011 8:13 AM
To: Roberts, Christine
Subject: Patterson Creek Letter

Chris,

Please prepare an Attachment B for the Patterson Creek letter. The attachment should list the names and addresses like a service list, and should include the following water users (please sort the list alphabetically):

Circle Pi LLC
Harley Wallis
Norman Wallis
Scott Whitworth
M2 Technical Services
Ted O'Neal
Big Creek Ranch LLC
Jim Martiny
Linda Martiny
Peggy Martiny
Virginia Martiny
D & K Moen Ranch LLC
Big Springs Creek Ranch LLC