



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

July 19, 2012

Bruce Mulkey
25 Mulkey Lane
Salmon, Idaho 83467-5167

Dear Bruce:

Thank you for visiting with me, Pete Van Der Meulen, and Roger Chase on June 26, 2012. It was good to see you again.

I spoke to Tim Luke of this office about the litigation regarding the county road and operation of a culvert which may be affected by tailwater discharging into a draw between the Wimpey Creek and Pratt Creek drainages. This same draw is also the source of a spring in which there is an irrigation water right appurtenant to land that Verdell Olson irrigates and/or operates.

Tim confirmed that he had attended the Water District 74 meeting in both 2011 and 2012. Tim also told me that he has received correspondence and phone calls from a number of parties involved in the county road culvert matter. In addition, Tim has spoken to Rick Sager about the dispute and Rick has done some reconnaissance for Tim over the past year with respect to diversions and water use from Pratt Creek. Early last winter Rick worked with the Pratt Creek water users to assure that their diversions from the creek were shut off. Moreover, the Department has provided several notices to the Pratt Creek water users regarding their water rights and authorized uses.

I asked Tim what more he thought the Department could have done to address the dispute. He says that activation of the Pratt Creek water district or combining it with Water District 74 would ensure the water right holders divert only the water to which they are entitled and to assure that irrigation diversions are shut off during the non-irrigation season. However, during the high spring runoff period, court decisions recognize the right to divert water in excess of recorded water rights within the Lemhi River basin. The Department plans to provide notice of a hearing later this summer to propose adding the Pratt Creek water district to Water District 74.

Tim and I were unable to identify other sections of the law establishing authority in the Department to act affirmatively to prevent flooding of the county road or to prevent possible tampering with drainage conduits. There certainly are rights and obligations associated with

Bruce Mulkey
July 19, 2012
Page 2

these activities, but the legislature has not given the Department authority to assert itself in these factual settings. Only if there is a clear and egregious showing of waste of water could the Department get involved.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman", with a stylized flourish at the end.

Gary Spackman
Director

cc: Peter Van Der Meulen
Roger Chase
Rick Sager
Tim Luke