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JUN 19 2013

DEPARTMENT OF
WATER RESOURCES

June 16, 2013

To:

Tim Luke

Idaho Department of Water Resources

PO Box 83720

Boise, ID 83720-0098

Dear Mr. Luke,

I'm writing in response to your June 13, 2013 letter re: Notice of Petition for Appointment of Lateral Manager for the Ellis Subdivision Lateral. At this time, and for the past few years I have not had any irrigation pipes to use during the seasonal low flow rotations. I passed on my turn during the rotations because I had less livestock to feed and plenty of pasture, so I let Dave Ellis (watering for his parents, Jack and Diane Ellis, and Ann and Lee Lieberman so he could pasture his cows) and Brian Keller (watering for Andrea Clifton formerly Avery so he could pasture his cows). Then I gave some of my irrigation pipe to Jerold Wallace for his assistance with some work on my place. While the rest of it was stacked in my cul-de-sac Dave Ellis helped himself to it without asking or compensating me. So now I don't have any pipe and can only flood irrigate before the water drops off and goes into rotation. I can't use the mainline.

I intend to acquire pipe for the 2014 season so I can take my place in the low flow rotation again. However, the water will soon drop off for this year and I will not be participating. It appears the 2013 lateral ditch manager appointment will not happen prior to the beginning of rotation and the end of the flood irrigation season. For that reason, I'm requesting exemption from sharing the cost of a lateral manager in 2013.

Our watermaster, Brian Keller has made a variety of demands to take the position of lateral manager, and we have not been successful in coming to any agreements. I have asked people to install measuring devices at every meeting and been lied to re: who has them and where. So I walked the system to see for myself. Attached is a summary of our current system that I prepared for the attorneys who have been hired by Jerold Wallace, Lee Lieberman, and Jack Ellis to try to resolve these issues for the subdivision association.

Jerold Wallace and I are also bringing suit to prevent Dave Ellis, Don Halverson, Brian Keller, and any other commercial livestock growers from pasturing their cattle in the subdivision as per the "no commercial livestock" protective covenants that Jack and Diane Ellis attached to the sale of these properties and is recorded at the courthouse. Andrea Clifton has defaulted on response to the suit, but Jack Ellis and Lee Lieberman are contesting. Lieberman's property is for sale so we hope to have this issue and the irrigation issues settled in a timely manner.

Sincerely,



Lucy Littlejohn

PO Box 193

Carmen, ID 83462

2013 WATER DELIVERY MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is made and entered into by and between the parties listed on Exhibit 1 attached hereto (the “Association Members”).

RECITALS:

- A. The Association Members own water right which allow for the diversion and use of water from Smout Creek at a point of diversion located in the SW1/4NE1/4NE1/4 of Section 31, Township 23N, Range 23E, in Lemhi County, Idaho, into a common ditch system known as the “Ellis Subdivision Lateral.” The Ellis Subdivision Lateral is more particularly described as follows:
1. An existing open earthen ditch commonly referred to as the “Upper Ditch”, which originates at the Ellis Subdivision Lateral Diversion on Smout Creek and continues in a generally southwesterly and easterly direction across properties owned by non-Association Members John and Debbie Jakovac, and properties owned by Association Members Bessie Halverson, Jack and Diane Ellis and Jerold Wallace.

There are 5 additional points of diversion from the Upper Ditch as described in order from uppermost to lowermost below.

 - a) The first lateral diversion (diversion #1) is a ditch that flood irrigates non-Association member Bessie Halverson and Association Members Jack and Diane Ellis’ properties (Figure 1). The water taken at diversion #1 is unmeasured. Dave Ellis and Don Halverson run their cows on these properties.

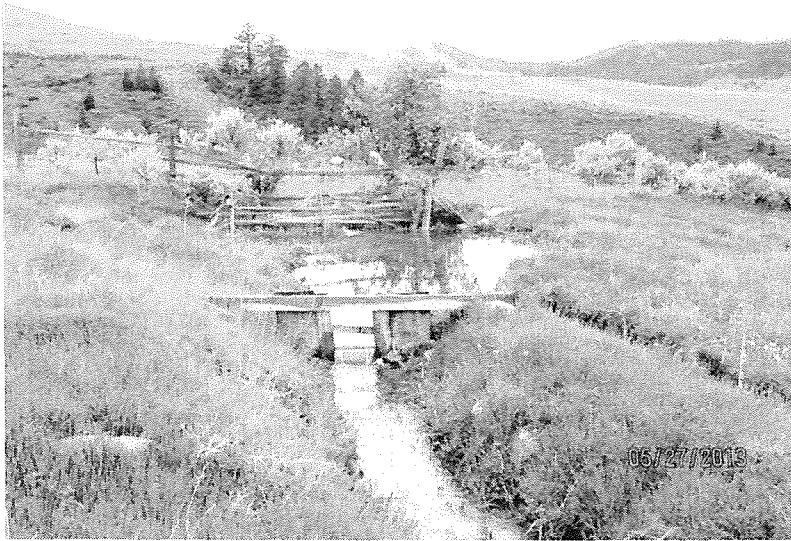


Figure 1: Upper Ditch Diversion #1 to Halverson and Ellis properties on the right

b) The second diversion (diversion #2) goes to the grizzly/irrigation pipe system on the Ellis property (Figure 2). The water taken at diversion #2 is also unmeasured.



Figure 2: Upper Ditch diversion #2 to the Ellis' grizzly and pipe system

c) The third diversion (diversion #3) is a ditch that flood irrigates the Ellis' property (Figure 4). The Ellis' V-notch weir is upstream of diversion #3 (Figure 3). This is the first measuring device on the Upper Ditch after the Smout Creek point-of-diversion.

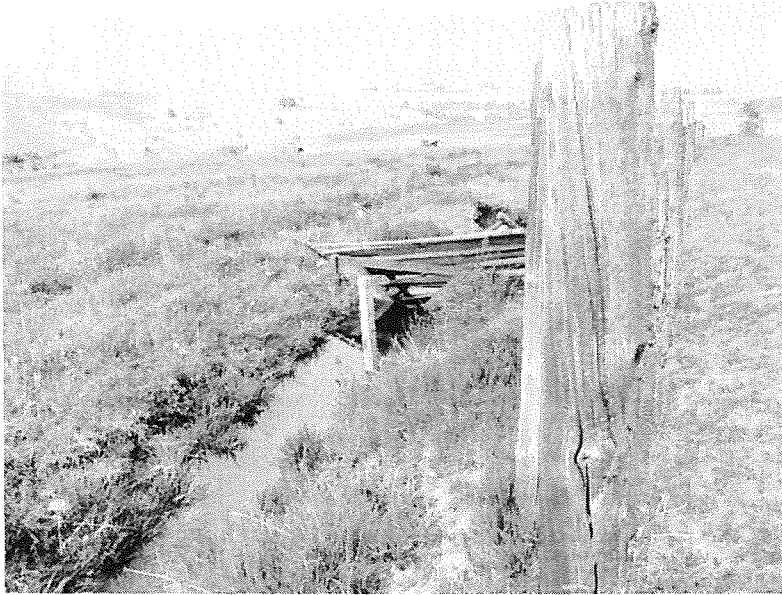


Figure 3: Ellis' V-notch weir in the Upper Ditch downstream of Halverson and Ellis' diversions #1 and #2

Comment [A1]: I didn't look at this to see if it is properly installed because Jack was sitting on his 4-wheeler glaring at us



Figure 4: Upper Ditch diversion #3 below Ellis' V-notch weir that flood irrigates Ellis' property

Surplus water from the Halverson and Ellis diversions #1-3 flows through two ditches on Jack and Diane Ellis' property to Association Members Ann and Lee Lieberman's property. These ditches border the east and west sides of subdivision road up to the Wallace and Ellis properties (Figure 5 and Figure 6). The Liebermans also get flood irrigation water from a lower Smout Creek point-of-diversion (Figure 7).



Figure 5: Ditch on the east side of the subdivision road that diverts water from the Upper Ditch through Ellis and Halverson's properties to Lieberman's property

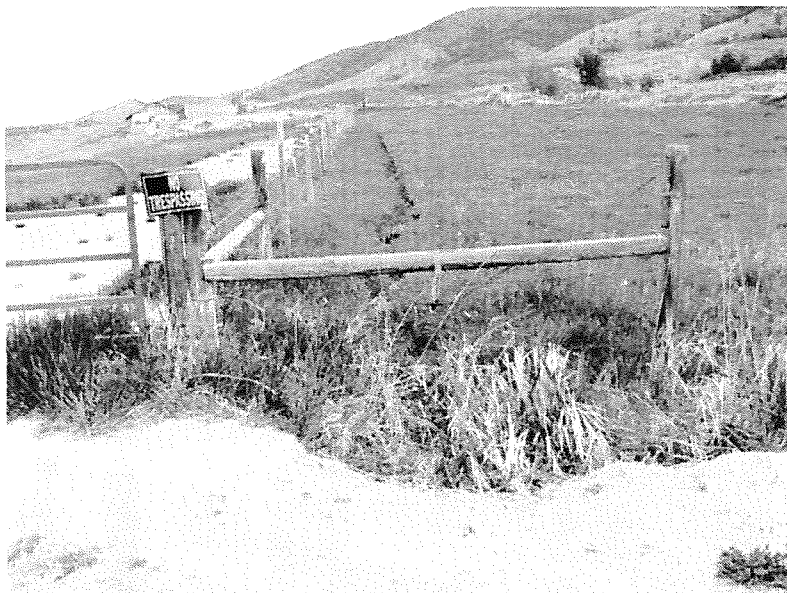


Figure 6: Ditch on the west side of the subdivision road that diverts water from the Upper Ditch through Ellis' property to Lieberman's property. This is the ditch that blows out the road to Littlejohn and Clifton's properties.



Figure 7: Water from Lieberman's lower Smout Creek diversion

e) Wallace installed a flume to measure the combined water rights for himself, Association Members Lucy Littlejohn and Andrea Clifton where the ditch crosses the common boundary between the properties owned by Jack and Diane Ellis and Wallace (Figure 8).

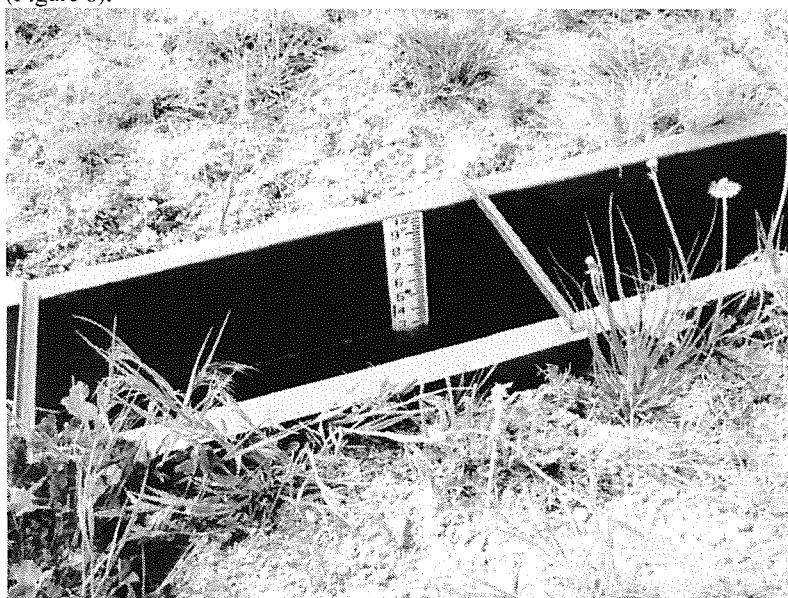


Figure 8: Wallace, Littlejohn, Clifton flume in the Upper Ditch downstream of Ellis' diversion #3

Below the flume, all of the Upper Ditch water flows into the irrigation device described herein as the "bubbler" (Figure 9). The bubbler was installed by Wallace's predecessors-in-interest, James and Angie Brownlee to provide enough water to irrigate the Brownlee, Littlejohn, Clifton, Lieberman properties through an above ground mainline during periods of low flow. The bubbler is located on Wallace's property and is owned by Wallace. The bubbler collects Smout Creek water conveyed through: (1) the Upper Ditch, (2) a no name, perennial spring-fed creek that flows through the Keystone Ranch, Wallace, Littlejohn, and Clifton properties, and (3) wastewater from the Keystone Ranch. This co-mingled water raises the water level to create head pressure through the bubbler to deliver water to: (1) Wallace's buried pipeline system that delivers water only to Wallace and (2) the above ground mainline to Littlejohn, Clifton, and Lieberman.

Littlejohn and Clifton's Upper Ditch water for flood irrigation is returned from the bubbler via a small ditch to the no name creek (Figure 10). During the irrigation season the bubbler and the creek gain additional flow from "wastewater" from the Keystone Ranch's Smout Creek diversion (Figure 11).

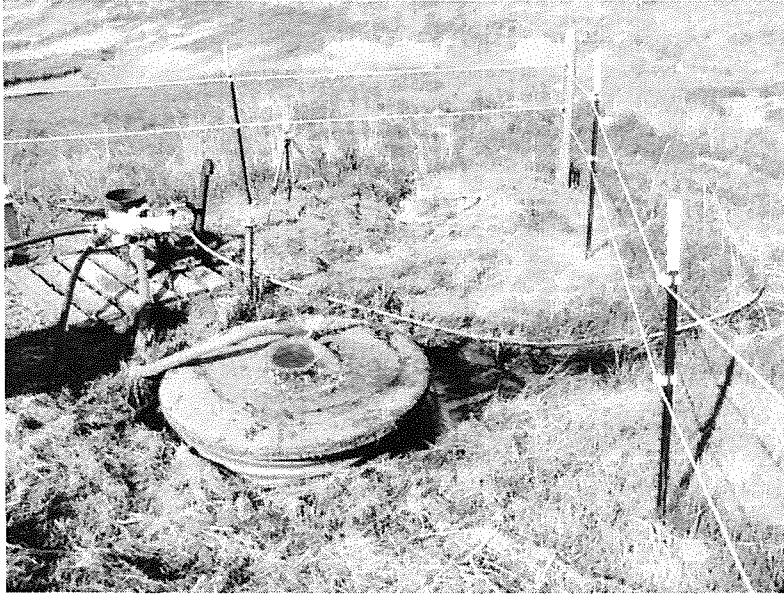


Figure 9: The bubbler on Wallace's property that diverts water to Wallace's buried pipe system and the above ground mainline to Wallace, Littlejohn, Clifton, and Lieberman



Figure 10: The bubbler (top of photo) and the ditch from the bubbler that delivers Littlejohn and Clifton's Upper Ditch water for flood irrigation via the no name creek



Figure 11: No name, perennial, spring-fed creek that flows through Keystone Ranch, Wallace, Littlejohn, and Clifton properties. Wastewater from the Keystone Ranch's Smout Creek diversion co-mingles with this creek and enhances flow during the irrigation season.

Comment [A2]: I think this is Wolfley's property managed by Keystone

d) There is a wooden headgate with two 8-inch stop-boards that was built by Wallace in 2012 across the no name creek to divert water to the bubbler for use in his buried pipeline (Figure 12, Figure 13, and Figure 14). Prior to 2012, water was diverted to the bubbler by a much less efficient rock weir, so that more floodwater was available to Littlejohn and Clifton downstream of the bubbler.



Figure 12: Headgate across the no name creek built by Wallace in 2012 to divert water to the bubbler



Figure 13: Wallace headgate and ditch that diverts water from the no name creek to the bubbler on his property

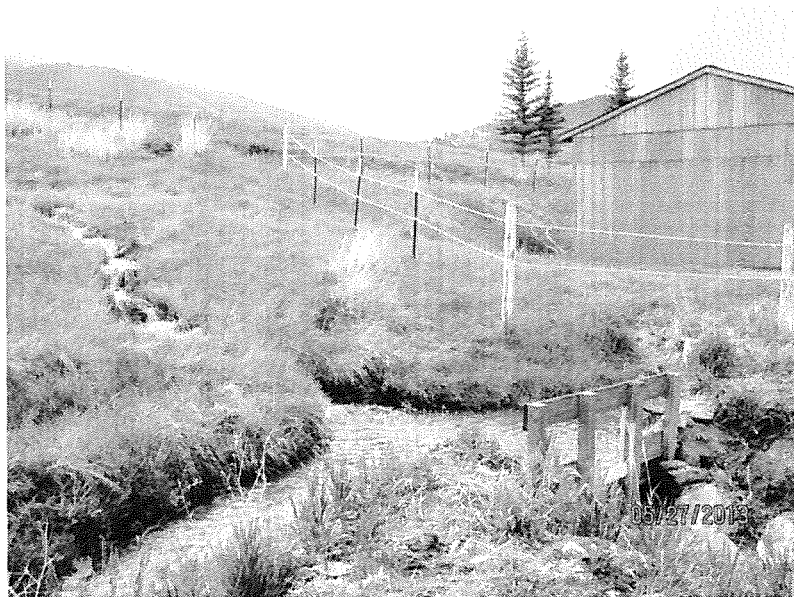


Figure 14: Upper Ditch water (top of photo) and water from Wallace's no name creek diversion (left of photo) flowing toward the bubbler (off photo to the right)

e) The above ground mainline originates on Wallace's property and delivers water from the bubbler to Littlejohn, Clifton, and Lieberman when the butterfly valve at the end of Wallace's buried pipeline is open. The section of above ground from the butterfly valve to the cul-de-sac is available to Wallace and Littlejohn. The section below the cul-de-sac is available to Lieberman and Clifton. These 2 sections of above ground pipe cannot be operated independently because there isn't a butterfly valve between them.

Littlejohn currently lacks a pipeline system and uses flood irrigation exclusively. Clifton and Littlejohn both get their floodwater from their Upper Ditch water and Keystone wastewater that is co-mingled with the no name creek below the bubbler. This source of floodwater is not available to Wallace or Lieberman.

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DEPARTMENT OF
WATER RESOURCES

May 28, 2013

To: James Cefalo
c/o IDWR
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Dear Mr. Cefalo,

I am writing to protest Jerold Wallace's application for rights to the Keystone Ranch's "wastewater" from their Smout Creek diversion. Smout Creek is a tributary to Freeman Creek, which is a tributary to Carmen Creek.

The "wastewater" Wallace is filing on consists of:

1. an unnamed perennial, spring-fed creek that flows through his property downstream to my property and Dr. Andrea Clifton's property and
- 2) surplus or "wastewater" from the Keystone Ranch's Smout Creek diversion that is sent down the drainage during the irrigation season.

I believe the property Keystone Ranch is irrigating with this water belongs to Wolfley after a court settlement between the Kellers and Wolfley. For now, the Kellers continue to farm the property but future subdivision by Wolfley is likely.

Historically, the Jack Ellis used the co-mingled spring water and wastewater in this unnamed creek to flood irrigate the properties that now belong to Wallace, Clifton, and I.

In 2001-2002, Ellis sold these 3 properties to James Brownlee, Clifton (her water right is under Andrea and Kevin Avery), and I. Brownlee built a bubbler on his property to and the co-mingled water was partially diverted with a hand-made rock weir so that it flowed into the bubbler along with our Smout Creek water rights for our mutual use through a mainline system. This mainline also served Ann and Lee Lieberman's property.

Around 2005-2006, Brownlee sold his property to Wallace. In 2012, Wallace built a wooden headgate with two 8" check boards to divert the co-mingled water into the bubbler property for use in his buried pipe system (Figures 1 and 2). There is no measuring device on this diversion. Mr. Wallace had previously disconnected the mainline in 2010 or 2011, so that the other landowners in the Ellis Subdivision did not have access to water from the bubbler.



Figure 1. Wallace's new headgate across the unnamed creek and the diversion to his bubbler on the left

Clifton and I get our Smout Creek water rights delivered as return flow from the bubbler through a short ditch that flows into the unnamed creek (Figure 3). This water is co-mingled with the spring and wastewater in the unnamed creek again, below the bubbler. Currently this is the only irrigation water Clifton and I have access to because of disputes regarding the mainline that originates on Wallace's property, and I do not have any pipes. We use a ditch system that has historically served this properties. We do not have a way to measure the return flow we receive from the bubbler but plan to install one in 2013.

This year, I noticed a significant decrease in the water available to Clifton and I for flood irrigation. I mentioned this to Wallace several times, and thought it was because of a low water year and other use above us. It wasn't until I walked up the draw yesterday and discovered his new headgate that I realized this was a one of the reasons our water delivery was so obviously reduced.



Figure 2. Wallace's diversion from the unnamed creek flowing to the bubbler (left of photo). Ditch that delivers Wallace, Littlejohn, and Clifton combined Smout Creek water rights to the bubbler (top of photo). Bubbler is off the photo to the right behind Wallace's garage.

This spring we have tried and failed to form a co-operative and functional Ellis Subdivision Lateral Ditch Users Association to resolve our multitude of differences and arguments, which culminated last year in Dave Ellis assaulting Wallace and a felony trial.

It was through a conversation with Wallace and his attorney that I learned Wallace planned to file on the water that is used by himself, Clifton, Lieberman, and I. Since I have only just found out about the headgate and the filing on this water, I have not told Clifton and Lieberman. I'm certain they would see this application, as I do, as one more case of negotiating in bad faith as we try to resolve our irrigation system issues.



Figure 3. Return flow from Wallace's bubbler that flows back into the unnamed creek and provides flood irrigation water to Clifton and I.

Therefore, I respectfully ask that you deny Wallace's application at this time, and in the foreseeable future until our Association Members have approved a Memorandum of Understanding that addresses all the water rights and delivery systems used by the members, including this one.

Sincerely,

Lucy Littlejohn

Lucy Littlejohn, Senior Fisheries Biologist
Salmon Environmental Services LLC
P.O. Box 193
Carmen, ID 83462
(208) 756-7514
llittlejohn@centurytel.net

cc: Dr. Andrea Clifton