



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 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

February 24, 2014

Jerold W Wallace
52 Smout Creek Rd
Carmen, ID 83462

RE: Your Correspondence Dated January 20, 2014, Petitioning for Appoint of a Lateral Manager on the Ellis Subdivision Lateral

Dear Mr. Wallace:

The above referenced petition was received by the Idaho Department of Water Resources ("Department") on January 24, 2014. The Department has reviewed and considered your petition for appointment of a lateral manager on the Ellis Subdivision Lateral.

The Department hereby denies your petition. In accordance with Idaho Code § 42-1301, lateral water users have until the last Monday of March of each year (or March 31, 2014) to meet and form a lateral water users association and elect a lateral manager. As noted in your petition, the Department appointed Dave McFarland as lateral manager last year. The Department contacted Mr. McFarland on February 10, 2014 to determine whether he would have any continued interest in serving as a lateral manager this year. Mr. McFarland indicated that he would be willing to serve as lateral manager in 2014. The lateral users therefore have a well qualified and neutral candidate that they can elect on their own. The uses have sufficient time to hold a meeting and elect a lateral manager. The Department has limited resources. It should not be expected to continuously appoint a lateral manager simply because the lateral users fail to cooperate with each other. The lateral users have a responsibility to elect their own manager. The Department encourages the users to exercise that responsibility.

Please contact me directly at 208-287-4959 or by e-mail at tim.luke@idwr.idaho.gov if you have further questions concerning this matter.

Sincerely,

Tim Luke
Chief, Water Compliance Bureau

cc: Dave McFarland
Brian Keller, Water District 75D Watermaster
IDWR Eastern Region
Water Users, Ellis Subdivision Lateral
Rob Harris, Attorney
Dan Steenson, Attorney

BETH ANNE O CONNOR WALLACE
11920 NARCISSUS RD
JACKSON CA 95642

BESSIE Y HALVERSON
25 W 300 N
RUPERT ID 83350

KEVIN A AND ANDREA C AVERY
51 HWY 28
SALMON ID 83467

JEROLD W WALLACE
PO BOX 126
CARMEN ID 83642

LEE AND ANN LIEBERMAN
8912 E PINNACLE PEAK RD
SCOTTSDALE AZ 85255

LUCY HINCKLEY LITTLEJOHN
PO BOX 193
CARMEN ID 83462-0193

JACK F AND DIANE M ELLIS
PO BOX 301
SALMON ID 83467

KEVIN J AND MARY J KELLER
PO BOX 36
CARMEN ID 83462

DAN STEENSON
SAWTOOTH LAW OFFICES
1101 W RIVER ST STE 110
BOISE ID 83707

ROB HARRIS
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS ID 83405

BRIAN KELLER
PO BOX 253
CARMEN ID 83462

DAVID MC FARLAND
PO BOX 124
CARMEN ID 83462

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCE RECEIVED
OF THE STATE OF IDAHO**

JAN 24 2014
DEPARTMENT OF
WATER RESOURCES

**PETITION FOR APPOINTMENT OF LATERAL MANAGER OF THE ELLIS SUBDIVISION
LATERAL MANAGER OF THE ELLIS SUBDIVISION LATERAL PURSUANT TO IDAHO
CODE &42-1308**

Jerold W. Wallace hereby petitions the Director of the Idaho Department of Water Resources (hereinafter, the "Director") pursuant to Idaho Code &42-1308 to appoint a lateral manager for the Ellis Subdivision Lateral (as described below) located in Lemhi County, Idaho. The Petitioner owns water rights that are authorized for delivery through the Ellis Subdivision Lateral, along with other water right owners as described in the attached Exhibit #1.

A certain diversion diverts 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 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. The Upper Ditch terminates at the irrigation device described herein as the "bubbler". There is a measuring device in the drainage below the Upper Ditch upstream of the bubbler where the flows leaves the property owned by association members Jack and Diane Ellis and enters Association member property Jerold W. Wallace. The approximate location of the Ellis Subdivision Lateral is depicted on the map attached as Exhibit #2.

Disputes have arisen between the Association Members, Jerold W. Wallace and the Spokesperson/water manager on behalf of Don Halverson, Jack Ellis,

and Lee Lieberman. The person holding the position of Water Management and Spokesperson is Dave Ellis. He runs commercial Livestock on all three of the properties claiming this gives him a Beneficial right to water use above all legal Deeded Water right holders. I.E.: Jerold W. Wallace, Lucy Littlejohn, and Andrea Clifton.

Dave Ellis has gone as far as assaulting Jerold W. Wallace over the use of Deeded water rights. Assault 2012. Exhibit #3

Attempts have been made with legal counsel for water right deliveries to the Wallace measuring device. All attempts have been ignored by Jack and Dave Ellis claiming Cattle have a priority in Idaho over all Deeded Water Rights.

After all the legal litigation Don Halverson, Jack Ellis, and Lee Lieberman refused proper water delivery to the measuring device on the Wallace property. But yet they demanded use of the Wallace Sprinkler system for the Lee Lieberman property. See actual conversations that took place thru legal counsel during May 2013. Exhibit #4

The disputes that occurred were during High flow, medium flow and low flow.

Jerold W. Wallace has been notified by letter, via legal counsel, never to set foot on Don Halverson's property. (Exhibit #5) Jerold W. Wallace is not allowed on any portion of the Upper Ditch. This has been also enforced by Threats and Assault at Jerold W. Wallace's front door step by Spokesperson Dave Ellis.

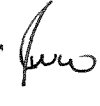
All the properties within this irrigation system have varying water rights which Spokesperson Dave Ellis is suggesting the 1915 rights not be honored.

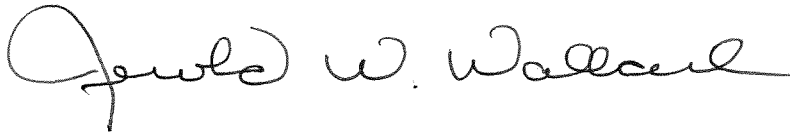
Dave McFarland of Carmen, Idaho, volunteered for water season 2013 but the season was over as of date of his appointment.

The entire group of water users have a major break down trying to agree on any issues.

Therefore, Petitioner Jerold W. Wallace requests:

1. The Director appoint a Lateral manager for the Ellis Subdivision Upper Ditch and fix his compensation (Idaho Code &42-1308)
2. That such lateral manager exercises the duties of the association officers to make and collect assessments to achieve the proper allocation and distribution of water from the Ellis Subdivision Upper Ditch. (Idaho Code & 42-1308).
3. That such appointment be for water year 2014 entire irrigation season.
(Idaho Code & 42-1308).

Dated this 20th Day of January, ~~2013~~ 2014 



Jerold W. Wallace

52 Smout Creek

Carmen Idaho 83462

Copies Mailed via Certified Mail to:

- 1.) Gary Spackman
Director
Idaho Dept of Water Resources
322 East Front ST
P.O. Box 83720
Boise, ID 83720-0098
- 2.) James Cefalo
900 N. Skyline Drive Suite A
Idaho Falls, ID 83402

- 3.) Lucy H. Littlejohn
P.O. Box 193
Carmen, ID 83462
- 4.) Bessie Y. Halverson
25 W. 300 N.
Rupert, ID 83350
- 5.) Jack & Diane Ellis
P.O. Box 301
Salmon, ID 83467
- 6.) Lee and Ann Lieberman
8912 E. Pinnacle Peak Road
Scottsdale, AZ 85255
- 7.) Andrea Clifton
51 HWY 28
Salmon, ID 83467

Exhibit #1

Type	Water Right No.	Owner	Priority Date	Div. Rate (cfs)	Combined Div. Rate (cfs)	% of Total Water Rights								
WR	75-14011	WALLACE, BETH ANNE O CONNOR; WALLACE, JEROLD W	5/1/1915	0.23	0.49	0.28								
WR	75-14009		9/7/1940	0.26										
WR	75-14183	LITTLEJOHN, LUCY HINCKLEY	5/1/1915	0.19	0.38	0.22								
WR	75-14017		9/7/1940	0.19										
AJ Rec	75-14768	ELLIS, DIANE M; ELLIS, JACK F	5/1/1915	0.12	0.36	0.21								
WR	75-14356		9/7/1940	0.24										
WR	75-14353	LIEBERMAN, ANN; LIEBERMAN, LEE	5/1/1915	0.081	0.243	0.14								
WR	75-14357		9/7/1940	0.162										
WR	75-14034	AVERY, ANDREA C; AVERY, KEVIN ALLEN	9/7/1940	0.24	0.24	0.14								
AJ Rec	75-14769	HALVERSON, BESSIE Y	5/1/1915	0.04	0.04	0.02								
			TOTALS	1.753	1.753									

Exhibit #2

IDAHO Department of
Water Resources
Irrigation Rights Finder





Exhibit #3

11/28/13

Printer Friendly

Exhibit #4

From: "Dan Steenson" <dan@sawtoothlaw.com>
Subject: FW: FW: Draft MOU
Date: Thu, May 23, 2013 6:49 am
To: "Jerold Wallace <smoutcreek@volcano.net> (smoutcreek@volcano.net)"
<smoutcreek@volcano.net>,"Lucy Littlejohn (llittlejohn@centurytel.net)"
<llittlejohn@centurytel.net>

FYI

-----Original Message-----

From: Rob Harris [mailto:rharris@holdenlegal.com]
Sent: Wednesday, May 22, 2013 5:03 PM
To: Dan Steenson
Subject: RE: FW: Draft MOU

Dan:



Jack is going to check his weir which is just below where he diverts to see how much is going past to Jerry and others. It was at a 7 before, which is what they understand is sufficient for the users below. I suspect there is cooler weather, and reduced flows in the creek. With low water, water needs to be delivered to everyone, so I am working to get the adjustments made to ensure more water to the lower users.

I am working through your MOU, which had more changes that I anticipated, so I hope to get back to you quickly. One question I have is the first additional paragraph regarding the recitals. I don't think the recitals are contractual but simply provide background. Perhaps you can explain to me why you think this is a necessary provision.

I'll get back to you with more questions.

Thanks,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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-----Original Message-----

From: Dan Steenson [mailto:dan@sawtoothlaw.com]
Sent: Wednesday, May 22, 2013 4:44 PM
To: Rob Harris
Cc: Jerold Wallace <smoutcreek@volcano.net> (smoutcreek@volcano.net); Lucy Littlejohn (llittlejohn@centurytel.net)
Subject: RE: FW: Draft MOU

Jerry advises me that the Upper Ditch is drying up and that he is going to shut down the bubbler for safety.

-----Original Message-----

From: Dan Steenson
Sent: Wednesday, May 22, 2013 3:25 PM
To: 'Rob Harris'
Cc: Jerold Wallace <smoutcreek@volcano.net> (smoutcreek@volcano.net); Lucy Littlejohn (llittlejohn@centurytel.net)
Subject: FW: FW: Draft MOU

Rob,

Please see below from Jerry responding to your 5/21/13 email.

Attached is the MOU with revisions I made and sent to Jerry and Lucy Littlejohn for review last week. Jerry says the MOU is acceptable to him. Lucy has not responded yet.

Dan

-----Original Message-----

From: Jerold Wallace [mailto:smoutcreek@volcano.net]
Sent: Wednesday, May 22, 2013 1:34 PM
To: Dan Steenson; llittlejohn@centurytel.net
Cc: smoutcreek@volcano.net
Subject: Re: FW: Draft MOU

>Sunday May 19, Dave Ellis completed his water regulation and my weir dropped to .32 on staff =.42 CFS. Dave was running 16 sprinklers. Lucy wanted to flood irrigate. Andrea is relying on flood irrigation at this point also.

The 3 of our water rights equal 1.11 CFS not including Lieberman's right.

Flood water going to Lieberman is in excess like 3 times his water right if not more. None of Lieberman's right is measured.

The water was restored to .89 CFS Monday 5/20/13 at which time I reopened the BFV. Still far below our rights.

11/28/13

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Kellers have diverted waste water into the upper ditch at the point of Jack Ellis's sprinkler system. This enables Dave to divert all water at Halverson's from the Upper Ditch and still he cannot deliver water to Jerry, Lucy, and Andrea.

Halverson and Ellis continue to demand more water than they are entitled to. Monday evening I shutdown my entire system so Lucy would have enough water to irrigate.

Dave is still taking as much as possible at that time.

I have to go into a rotation with Lucy so Andrea and her have water.

I have very little waste water and for the past 2 weeks Halverson, Ellis, and Lieberman have been taking 75% of all water out of the Upper Ditch.

My K-Lines only use 1.11 GPM per head.

Also Dave Ellis is making all the diversion changes at the Head of the Ditch, Halversons, Lieberman's, and Jack Ellis's property.

He is in full control of all water being delivered to the other properties.

Friday evening I had sufficient water, but by Sunday night Dave Ellis had cut the water back below required water rights.

Halverson's diversion is way above and beyond any legal right.

How do they claim they are only taking 180 GPM at Halverson's when there is no weir?

The excess water at Halverson's is then diverted in the lower ditch to Lieberman's.

Lee gets water from the runoff at Halverson's, the bubbler and the Lower Ditch. He is getting 3 sources of water.

If the bubbler does not overflow than Andrea and Lucy are being deprived of their water rights.

How do we monitor what Dave is doing above us when they have dams installed in the ditch and regulation is done with a shovel?

Jerry,

>

> Please review the email below and let me know your side of the story.

>

> Dan

>

> -----Original Message-----

> From: Rob Harris [mailto:rharris@holdenlegal.com]

> Sent: Tuesday, May 21, 2013 11:30 AM

> To: Dan Steenson

> Cc: Plus3ranch@centurytel.net

> Subject: RE: Draft MOU

>

> Dan:

>

> Just following up on the MOU and on a value adjustment issue. Over
> the

weekend, Mr. Wallace shut down the valve at the head of the surface mainline cutting
off water to the Liebermans and Andrea Clifton. In visiting with Brian Keller, he
observed that Mr. Wallace had all 4 lines

> on over the weekend, so we do not understand why the valve was shut
> off

and there was water running off the bubbler. While we don't have an executed MOU
yet, it seemed clear that the parties had agreed not to adjust that valve unless
done so by the lateral manager. To keep the peace, please advise your client not to
adjust that valve without first contacting Brian.

>

> In the MOU, paragraph 8, I felt, addressed the situation where there
> is

a

> problem with water delivery. I have amended it in the attached
> version

2

> to clarify it further--it was my understanding that everyone agreed
with

> this policy, but if Mr. Wallace's position has changed, please let me
know. Here is the revised provision:

>

> 8. Disputes. Any complaints regarding delivery of water shall be
addressed to the lateral manager, and the lateral manager shall
> thereafter address the situation by adjusting valves, headgates, etc.,
and no Association Member shall shut off or adjust valves or headgates unless
specifically directed by the lateral manager. The lateral manager
> shall communicate any such adjustments to the Association Members as
soon

> as practical after such adjustments are made.

>

>

>

> Robert L. Harris

> HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

> 1000 Riverwalk Drive, Suite 200

> P.O. Box 50130

> Idaho Falls, ID 83405-0130

> Phone: (208) 523-0620

> Fax: (208) 523-9518

> E-Mail: rharris@holdenlegal.com

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to another party.

>

>

> -----Original Message-----

> From: Dan Steenson [mailto:dan@sawtoothlaw.com]

> Sent: Friday, May 17, 2013 2:23 PM

> To: Rob Harris

> Subject: RE: Draft MOU

>

> Thanks Rob.

>

> -----Original Message-----

> From: Rob Harris [mailto:rharris@holdenlegal.com]

> Sent: Friday, May 17, 2013 2:17 PM

> To: Dan Steenson

> Subject: Draft MOU

>

> Dan:

>

> Attached is a draft MOU for your review. I tried to keep it simple, but

> liked the system description you had, so I included it. I also provided

> some examples in the provisions to make the provision more clear.

>

> I've prepared an Exhibit 1 spreadsheet that removes the rotation schedule, and splits the parties into their respective sub-laterals.

>

> I am leaving the office now, but should be reviewing email tonight and over the weekend. I'd like to have something agreed to by early next week. I'll be traveling, and you can call me if you'd like at 201-8432.

>

> Thanks,

>

>

> Robert L. Harris

> HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

> 1000 Riverwalk Drive, Suite 200

> P.O. Box 50130

> Idaho Falls, ID 83405-0130

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> advice

to another party.

>

>

>

> -----Original Message-----

> From: Dan Steenson [mailto:dan@sawtoothlaw.com]

> Sent: Friday, May 17, 2013 12:23 PM

> To: Rob Harris

> Subject: RE: ##Jerold W. Wallace###

>

> The measurement is at the measuring device described in the draft articles near the common property boundary between Jerry and Jack & Diane
> Ellis.

>

> -----Original Message-----

> From: Rob Harris [mailto:rharris@holdenlegal.com]

> Sent: Friday, May 17, 2013 11:56 AM

> To: Dan Steenson

> Subject: RE: ##Jerold W. Wallace###

>

> As I said, Jack is looking into this and is attempting to call Dave. I've asked Jack to call me once adjustments are made. With plenty of water in the creek, everyone should be getting plenty.

>

> Is Jerry's measurement at the bubbler? I can't remember from my
> review

of notes what type of measuring device is there, but I recall that one is
> there. If you can describe it to me, that would be great.

>

>

>

> Robert L. Harris

> HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

> 1000 Riverwalk Drive, Suite 200

> P.O. Box 50130

> Idaho Falls, ID 83405-0130

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> advice

to another party.

>

>

>

> -----Original Message-----

> From: Dan Steenson [mailto:dan@sawtoothlaw.com]

> Sent: Friday, May 17, 2013 11:50 AM

> To: Rob Harris

> Subject: RE: ##Jerold W. Wallace###

>

> If Jerry's measurements are accurate, Ellis/Halverson are taking four times the quantity of water to which they are entitled, and Jerry et al are receiving less than 40% of the water to which they are entitled.

Clearly, Ellis/Halverson are depriving the downstream users of water. If

> there are high flows and more water is being diverted from Smout Creek than has been decreed, then the downstream users should receive their proportionate part of the excess. Clearly, this is not happening. Ditch

> loss does not explain the shortage Jerry is reporting to me.

>

>

> -----Original Message-----

> From: Rob Harris [mailto:rharris@holdenlegal.com]

> Sent: Friday, May 17, 2013 11:27 AM

> To: Dan Steenson

> Subject: RE: ##Jerold W. Wallace###

>

> Dan:

>

> I'm working on the MOU now, and will have it emailed this afternoon.

>

> Regarding the water use, Jack is attempting to get in touch with Dave to

> readjust in order to make sure there is sufficient water down the system.

> Jack is using 21 birds, and at 5 gpm per bird, this is 105 gpm. He

> is also flood irrigating a little, as are the Halversons, bringing

> their

use

> up to approximately 180 gpm, which is the amount of their water right.

I've asked Jack to double check the flows to make sure they are at approximately these amounts.

>

> In addition, during periods of high flows, the Department's position

> is

that diversion of high flows above the total of the water rights can occur until the

11/28/13

Printer Friendly

watermaster is called on to distribute water rights in priority. If no one is shorted of their water, they will not institute an enforcement action. I confirmed this with James Cefalo at IDWR's Eastern office just a few minutes ago, and you are welcome to call him to confirm it with him also. Since we don't have the MOU done yet, my understanding is that Dave opened the headgate on the upper ditch, and Jack is attempting to contact him to turn some additional water into the > system to ensure there is sufficient water for everyone. Once we get the

> MOU done, Brian will do the adjusting.

>

> Jack did say that it appeared that all of Jerry's sprinklers are running,

> and if there are issues, they will adjust ASAP. Also, we do not know if

> Lucy has sprinkler pipe, so they can't tell if she is irrigating either.

> However, if she is not getting sufficient water, adjustments can certainly be made.

>

> Lastly, I should point out that there may be some ditch loss between the

> Ellises diversion and the bubbler because the ground is not saturated yet. My experience is that this is not unusual early in the Springs.

With all parties irrigating, this should bring the sub up, and once the ditch is wetted and being used, the losses should go down. Regardless of

> the cause, the Ellises are committed to work with everyone to make

> sure

they have their water.

>

> Thanks,

>

>

>

>

> Robert L. Harris

> HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

> 1000 Riverwalk Drive, Suite 200

> P.O. Box 50130

> Idaho Falls, ID 83405-0130

> Phone: (208) 523-0620

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to another party.

>
>
> -----Original Message-----
> From: Dan Steenson [mailto:dan@sawtoothlaw.com]
> Sent: Friday, May 17, 2013 9:28 AM
> To: Rob Harris
> Subject: FW: ##Jerold W. Wallace###

> Rob,

>
> Please see the email below from Jerry Wallace. I spoke to Lucy
> Littlejohn this morning and she confirmed this morning that she is
short
> of water. Please let me know on what basis your clients are depriving
Wallace/Littlejohn/Clifton of water.

>
> Do you have a draft MOU prepared?

> Dan

> -----Original Message-----
> From: Jerold Wallace [mailto:smoutcreek@volcano.net]
> Sent: Thursday, May 16, 2013 2:54 PM
> To: Dan Steenson; llittlejohn@centurytel.net
> Cc: smoutcreek@volcano.net
> Subject: RE: ##Jerold W. Wallace###

>>Thurs. May 16, 2013 High Water Conditions flowing in Smout Creek.

> Ellis Lateral Ditch and Lower Ditch present operation:

> 1.) The Lower Ditch is in 100% operation flowing well above Lee
Lieberman's water right of .23 CFS.

> 2.) Ellis Lateral Ditch diversion point water flow at 2 CFS.

> 3.) Jack Ellis water right .36 CFS
> Don Halverson water right .04 CFS
> Total of .40 CFS

> 4.) Jerold Wallace water right .49 CFS
> Lucy Littlejohn water right .38 CFS
> Andrea Clifton water right .24 CFS
> Total of 1.11 CFS

> 5.) Weir on Wallace property .26' = .42 CFS

> The Spokesperson for Lee Lieberman, Don Halverson, and Jack Ellis is
also

> in charge of all of this regulation. (Dave Ellis) This is normal
water

> regulation for Dave Ellis.

>
> Don Halverson and Jack Ellis are taking 1.58 CFS and depriving Jerry
Wallace, Lucy Littlejohn, and Andrea Clifton of their legal deeded rights.
>
> And yes please share these facts with all involved including Mr.
Harris.
>
> Maybe Don Halverson and Lee Lieberman should come look at how water is
being distrubited on their behalf?
>
>
> Jerold W. Wallace
>
>
>
>
> Do you want me to forward your email to the others as a final
statement
>> of your position?
>> -----Original Message-----
>> From: Jerold Wallace [mailto:smoutcreek@volcano.net]
>> Sent: Monday, May 13, 2013 10:09 AM
>> To: Dan Steenson; llittlejohn@centurytel.net
>> Subject: ##Jerold W. Wallace##
>> My Final proposal:
>> 1.) I will re-install the mainline across my field to serve
>> Lieberman
> and Clifton.
>> 2.) Lucy Littlejohn Flood irrigates.
>> Jerold W. Wallace uses the bubbler system.
>> Lucy and Jerry want our water rights delivered to our weir.
>> Based
> on
>> flows at the Diversion point for the Ellis Lateral. (Upper Ditch)
>> If the other users insist on sharing they have that privilege,
>> but Lucy and I do not want any part of a rotation, just our water
delivered.
>> 3.) I will share any portion of the bubbler system as water flows
> permit
>> according to legal deeded water rights. Including any co-mingled
> water.
>> All according to Legal rights.
>> 4.) I will install a valve on the system to maintain my water
> pressure.
>> 5.) Brian Keller will be paid his fee to oversee all operations as
> Lateral Ditch Manager. To insure Proper Legal Deeded Water Rights are
being delivered.
>> 6.) I do not care to belong to any association. Just legal
> distribution
>> of all water rights.
>> 7.) I have always paid for and maintained the system on my property
as
> I
>> will continue to do so.
>> Pretty Simple,
>> Jerold W. Wallace
>> May 13, 2013

ROBINSON ANTHON & TRIBE

BRENT T. ROBINSON
MICHAEL P. TRIBE

ATTORNEYS AT LAW
615 "H" STREET
P. O. BOX 396
RUPERT, IDAHO 83350-0396

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

MATTHEW C DARRINGTON
BRETT C. ANTHON

January 16, 2013

Jerold W. Wallace
P.O. Box 126
Carmen, Idaho 83462

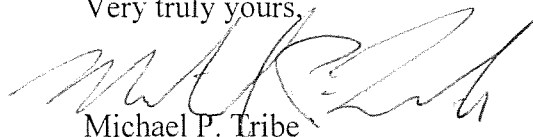
RE: David Ellis and Bessie Halverson

Dear Mr. Wallace:

My law firm represents Bessie Halverson and her family who owns the ranch that David Ellis leases in Carmen, Idaho, and who you are familiar with. It is my understanding that you are the neighbor to the Smout Creek property. It is also my understanding that you have been illegally entering the property and creating problems with Dave Ellis. My clients have placed a gate on the road into their property with no trespassing signs, but you have ignored those and continue to trespass onto the property. Your claim that another neighbor gets to use that easement is correct; he has been granted specific permission for his use only and you have no such right to use that easement and permission cannot be granted by the neighbor for you to use said easement. You do not have an easement to use their land to travel across said property and that any such use will be inconsistent with the general use of the property as is and any prior permission granted by third parties, prior lease-holders, or anyone other than Bessie or her two sons is specifically removed.

The Halversons and Mr. Ellis are specifically prohibiting you from entering the property without permission from Ms. Halverson or her sons Don or Dann Halverson. We do not want to take legal action but we will if you continue to trespass and we will also seek damages and attorney's fees. If you have any questions, please contact me directly.

Very truly yours,



Michael P. Tribe

MPT:bcl

cc: Clients

Upper Ditch, Point of Diversion Transfer, Waste Water and Main Line:

Don Halverson, Lee Lieberman, and Jack Ellis are all represented by Dave Ellis. He manages all of their water in return for his commercial Livestock operation. Jack Ellis sold 4 parcels of property with a covenant prohibiting commercial livestock on all of these properties including his own 20 acres. He has enforced this on all parcels but now is saying his son Dave Ellis has rights over the landowners to graze cattle for commercial use on any of the parcels he has sold.

Jack Ellis has stated over and over again that the Historical use of water to the Lee Lieberman property was distributed from a point on his property.

Jack Ellis and Jerold W. Wallace have both installed a pipeline, 6" in diameter, to supply a sprinkler system for irrigation. Same diameter as the Wallace system.

Jerold W. Wallace has engineering stating a 6" diameter pipe with the rise and fall of his system will deliver .32 CFS Maximum flow.

Jack Ellis changed Lee Lieberman's historical diversion from his property to the Bubbler system on the Wallace Property. Jack Ellis contends a 6" pipe is more than sufficient to supply water to Jerold W. Wallace, Lucy Littlejohn, Andrea Clifton, and Lee Lieberman.

Dave Ellis testified the above ground Main Line on the Wallace property did not leak and works fine. In fact he called Jerold W. Wallace and Lucy Littlejohn a "LIAR" when we testified the Main Line was leaking and damaging our properties with leakage. Jerold Wallace buried that portion of Main Line to stop the damage.

Jack Ellis and Lee Lieberman are presently suing Jerold W. Wallace over the use of the main line. Dave Ellis is their spokesperson and is the person behind the lawsuits for his commercial Livestock operation.

Jerold W. Wallace and Lucy Littlejohn are suing Jack Ellis and Lee Lieberman over the Commercial Livestock operation on parcels that Jack Ellis guaranteed would not be present for a period of 25 yrs following the sale of his Property. Jack and Diane Ellis and Lee Lieberman are claiming Jack Ellis can change the covenant to

allow Dave Ellis to graze his commercial Livestock because Idaho is actually a free range state.

Main Line Issue:

The main Line above ground pipe can be removed from the Jerold W. Wallace property. There is more than sufficient pipe to reattach to the riser on the Jack Ellis property. Run the mainline pipe thru the culvert, that is already present beneath the road, to supply Lee Lieberman's Sprinkler system. This would recreate the true Historical delivery point to Lee Lieberman. Jack Ellis has a 6" buried pipeline, plus by going this route creates a higher head PSI on the pipeline to give Lee Lieberman more head PSI for his historical sprinkler system. Jack Ellis and Lee Lieberman could drop their lawsuit against Jerold W. Wallace on behalf of their spokesperson Dave Ellis.

Lucy Littlejohn and Andrea Clifton both have historical water irrigation from the unnamed drainage. Flood irrigation.

Brian Keller stated in our phone conference on Jan 16, 2014 with James Cefalo, that the Keystone Ranch/Wolfley diversion point could supply Jerold W. Wallace change, for Point of Diversion, to the unnamed drainage but only have enough water for this one request of .49 CFS.

Jerold W. Wallace would no longer utilize the upper ditch for water rights.

Jerold W. Wallace would no longer have a need to pay a Lateral Ditch manager for the Upper Ditch.

Jerold W. Wallace does have a measuring device where the drainage water from the Upper Ditch enters his property. Jack Ellis, Lee Lieberman and Don Halverson would still be responsible to supply Deeded Water Rights for Lucy Littlejohn and Andrea Clifton to that point of measuring.

Jack Ellis and Lee Lieberman would have no reason to sue Jerold W. Wallace on behalf of Dave Ellis.

As Dave Ellis testified the above Ground Main Line does not have any issues with leakage so transferring to the true Historical source for Lee Lieberman should be no problem.

The connection of the Main Line to the Jack Ellis system would be on the riser below the Jack Ellis Home, far side of pond.

Waste Water Application:

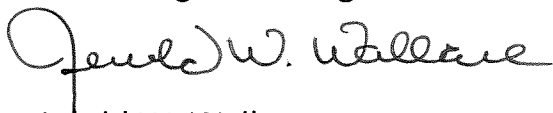
Once the main line issue is resolved then Jack Ellis and Lee Lieberman could drop their complaint against Jerold W. Wallace for his application for a Waste Water Complaint.

Jack Ellis could not deprive Jerold W. Wallace of his deeded water rights claiming his right to move deeded water rights uphill and stating the waste water is present and he has a beneficial right above and beyond any deeded water rights. His Beneficial right is for the commercial Livestock operation Dave Ellis is running.

Lee Lieberman could drop his complaint for the same reason.

All this said and done DAVE ELLIS would have no reason to set foot on Jerold W. Wallace's property. Dave Ellis claims he has a right to trespass on the Jerold W. Wallace's property even after he claims his assault to Jerold W. Wallace 1.5 yrs ago, at Jerold W. Wallace's front door step, was strictly in self defense. Even though Jerold W. Wallace never struck Dave Ellis. Jerold W. Wallace suffered 8 fractures of his left eye socket orbital bone, and 10 broken teeth.

Jerold W. Wallace does not want Dave Ellis coming onto his property and defending himself again. Doesn't like being left at his front doorstep for DEAD!

A handwritten signature in cursive script that reads "Jerold W. Wallace". The signature is written in dark ink and is positioned above the printed name.

Jerold W. Wallace

1/20/2014

Gary Spackman

Director, Idaho Department of Water Resources

322 East Front Street

PO Box 83720

Boise, Idaho 83720 - 0098

RECEIVED
FEB 21 2014
DEPARTMENT OF
WATER RESOURCES

Mr. Spackman,

This letter represents myself/us as property owner(s), holding water rights in Lemhi County, Idaho in a user-owned delivery system known as the Upper Ditch Delivery System. This ditch delivers irrigation water to acreages on what is collectively known as the Ellis Subdivision.

My/our decree number(s) is/are:

75-14352 75-14354
75-14356

A user-agreed description of the Upper Ditch Delivery System is as follows:

(1) An existing open earthen ditch commonly referred to as the "Upper Ditch", which originates at the Ellis Subdivision Lateral Diversion in Smout Creek and continues in a generally south-westerly and westerly direction across property owned by non-users John and Debbie Jakovac and properties owned by users: Bessie Halverson, Jack and Diane Ellis, and Jerold Wallace. The "Upper Ditch" portion terminates at an irrigation device described herein as the "bubbler".

There are measuring devices in the "Upper Ditch" upstream from the "bubbler" at the ditch's diversion point from Smout Creek, at a point on the Ellis property where they withdraw their water, and at a point where the "Upper Ditch" crosses the common boundary between the Ellis and Wallace property.

(2) An existing irrigation device known the "bubbler" which was installed by Mr. Wallace's predecessor -in - interest on the property now owned by Mr. Wallace. This "bubbler" collects Smout Creek water conveyed through the "Upper Ditch" and waste water from the neighboring Keystone Ranch. The "bubbler" raises the commingled water level to build head pressure to deliver the commingled water to user members: Jerold Wallace, Lucy Littlejohn, Lee and Ann Lieberman and Andrea Clifton. The "bubbler" conveys the commingled water to the pipelines described below.

(3) An existing buried pipeline, herein designated as the "bubbler pipeline" which originates at the "bubbler" and extends in a south-westerly direction across Mr. Wallace's property to convey commingled water from the "bubbler" to the beginning of a surface mainline.

(4) A surface mainline that begins at the down stream end of the "bubbler pipeline" and extends in a southerly direction, along the common boundary of the properties owned by Wallace and Littlejohn, to a buried section of mainline that extends under a cul – de – sac road to deliver water to the Lieberman and Clifton properties.

(5) A buried section of mainline under the cul – de – sac road.

(6) A surface mainline extending from the downstream end of the buried section to where the surface mainline ends along the common boundary of the properties owned by Lieberman's and Clifton.

Mr. Wallace has filed a petition with IDWR for the appointment of a lateral manager on the Upper Ditch Delivery System for 2014. I/we would like to be notified immediately of any decision you or your department makes regarding this petition. Mr. David McFarland was appointed by IDWR as lateral manager for the Upper Ditch Delivery System in 2013. I/we would like to recommend that Mr. McFarland be re-appointed as lateral manager, upon his consent, for the 2014 season.

As the water users on the Upper Ditch Delivery System have no formal association, I/we would also recommend that Mr. McFarland be given authority to collect and hold the water assessments, set by IDWR, for payment of his salary and minor, user-approved repairs or maintenance of the Upper Ditch Delivery System.

Sincerely,

Jack F. Ellis
Diane Ellis

Signature: _____

Date: _____

2/18/2014