



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

September 21, 2012

Barry T Williams
1277 Mink Creek Rd.
Arbon, ID 83212

Re: Your correspondence Dated August 15, 2012 - Bannock Creek

Dear Mr. Williams,

Your correspondence dated August 15, 2012 addressed to the Director of the Idaho Department of Water Resources ("Department" or "IDWR") was received by the Department on August 20, 2012. IDWR received a number of similar letters between August 22 and September 19, 2012 from other individuals, including Nelda Williams, Jason and Dejanet Williams, Justin Williams, Kevin North, Trevor Williams and Travis Williams. I have met with the Director and other IDWR staff regarding these letters, the general concern expressed in the letters, and some of the specific objections raised by your letter. The Director asked that I respond to you directly. I also spoke with you via telephone on this date to arrange a site visit of your property and water rights along Bannock Creek. You agreed to meet with me on September 22, 2012.

Your letter states that it "is not a request for conjunctive management but a call for delivery of water for rights 29-13764 and 29-13528 from (ground water) rights 29-2458A, 29-7931A, 29-13708, 29-13949, 29-13950, 29-13951, 29-13952, 29-13984 and 29-13985." Your letter also provides "objections" regarding pumping of ground water from wells under the above referenced ground water rights. Finally, your correspondence provides a summary of prior communications with the Department between 1992 and 2006. I wish to address your concerns in the order in which they were presented in your letter.

Call for Delivery of Water

Your letter states that you are not requesting conjunctive management of surface and ground water sources, but that you are calling for delivery of several surface water rights and asserting that those surface water rights are injured by junior ground water rights. Idaho law does not distinguish between a request for conjunctive management of surface and ground water resources and a call for delivery of surface water rights being injured by junior ground water rights. They are one in the same. A delivery call is defined under the Rules for Conjunctive Management of Surface and Ground Water Resources ("CMRs") as "a request from the holder of a water right for administration of water right under the prior appropriate doctrine." IDAPA 37.03.11.010.04. IDWR interprets your letter to represent a delivery call that must be addressed pursuant to the CMRs. (IDAPA 37.03.11).

On January 3, 2005, IDWR responded to your correspondence dated October 25, 2004 regarding delivery of your surface water rights 29-13528 and 29-10990 against junior priority ground water rights 29-2458A and 29-7931A. Although the Department's response noted that

Barry Williams Response

9/21/2012, p. 2

“surface water and ground water rights in the Bannock Creek drainage have not yet been included in a water district, ...the procedures for seeking conjunctive administration of the ground water and surface water in the Bannock Creek Drainage are written in Rule 30 of IDWR’s Conjunctive Management Rules (“CMRs”).” Further, IDWR’s January 3, 2005 letter (see attached copy) advised that “Rule 30 requires you to file a petition for conjunctive administration with IDWR”, and that “the petition should be filed in the form of a pleading described in IDWR’s Rules of Procedure.” IDWR’s January 3, 2005 letter further outlined the information that must be included in the petition in accordance with Rule 30.

IDWR hereby provides you notice that your letter dated August 15, 2012 is viewed by the Department as a petition for a delivery call pursuant to Rule 30 of the Conjunctive Management Rules. The petition has not been submitted in the form of a pleading described in IDWR’s Rules of Procedure (see attached copy of applicable Rules). Further, your petition has the following deficiencies:

- Fails to describe your water diversion and delivery system as required by Rule 30.01.a of the CMRs;
- Lacks names and addresses of the holders of ground water rights (respondents) who are alleged to be causing material injury to your rights as required by Rule 30.01.b of the CMRs;
- Lacks any measurements, data or study results that may be available to you to support a claim of material injury as required by Rule 30.01.c; and
- Does not describe any area having a common ground water supply within which you desire junior priority ground water diversion and use to be regulated.

IDWR will not take further action on your petition until you have addressed the above referenced deficiencies.

Review of Objections Stated in Your Letter

- A. Objection to pumping of well with right 29-13708 as it has been abandoned for over forty years until this year.

A partial decree for this right was issued by the Snake River Basin Adjudication (SRBA) District Court on March 22, 2004. The partial decree was issued for 163 acres of irrigation with a diversion rate of 1.37 cfs and a priority date of February 15, 1962. The right was originally licensed as right no. 29-2457. A water right transfer was filed in 2005 that split the right into rights 29-13708 and 29-13709. Right 29-13708 was reduced to 1.30 cfs for irrigation of 154.7 acres within the S1/2SW of Section 25 and the N1/2NW and SWNW of Section 36, Township 11 South (T11S) and Range 33 East (R33E).

Most of the water right place of use appeared to be irrigated per review of 2011 and 2009 aerial imagery. The imagery shows approximately 20 acres irrigated in these two years within the SENW of Section 36. The SENW of Section 36 is not included with the water right place of use description but the aerial imagery indicates that other acres authorized by 29-13708 in the S1/2SW of Section 25 were not irrigated in these two years. As a result, the total irrigated acres under 29-13708 in 2009 and 2011 was likely less than the total authorized 154.7 acres. IDWR will conduct a site investigation of the place of use with the right owner to verify the actual current place of use.

- B. Objection to pumping of well with right 29-2458A as it was abandoned from 1974 until 1992.

A partial decree was issued by the SRBA Court for this right on March 22, 2004. Aerial imagery on file at IDWR shows that most or portions of the place of use authorized by the right (155 acres in the NW1/4 of Section 12, T11S, R33E) have been irrigated in 2011, 2009, 2006 and 2004. IDWR staff visited the well in 2001 and found the well being used.

IDWR correspondence to you dated August 30, 2001 (copy attached) advised you of your opportunity to object to the Department's recommendation of this right in the SRBA. Specifically, IDWR advised you that you could challenge the validity of the SRBA water right claim and IDWR's recommendation to the court with respect to the forfeiture issue. The Department has no record that you filed any objections with either the Department or the SRBA Court.

- C. Objection to pumping of well with right 29-7931A. Ward's moved their pumping from a well a mile west to this well near the head of Bannock Creek in 1994. This well dried up an additional mile of our meadows. I also object to the additional water being pumped by the addition of a center pivot.

Right 29-7931A is a water right permit that was filed in May, 1990 and approved in January, 1991 for irrigation of 627 acres using a well located in the NWNWSW of Section 36, T11S, R33E. Review of this permit file and water right 29-7291 indicates that the well located in the NWNWSW of Section 36 was included as a point of diversion for water right 29-7291 which has a priority date of October 22, 1975. The permit originally approved for right 29-7291 was for a total of 1,760 acres of irrigation, including the lands that are now authorized by permit 29-7931A. An IDWR field exam conducted for right 29-7291 in 1987 found only 326.5 irrigated acres using just one well located in the NWSW of Section 35, T11S, R33E. The field examiner in 1987 noted that the well in the NWNWSW of Section 36 had been drilled but had no pump or motor installed. As a result, the well was not included as a point of diversion on right 29-7291 and the lands now authorized by permit 29-7931A were also not included on right 29-7291. In October, 1994, the permit holder requested an extension of time in which to submit proof of beneficial use for permit 29-7931A due to delays associated with crop losses at other locations and because they owned a different well located a mile to the west (NWSW Section 35) in which the casing had collapsed in January, 1993. The permit holder stated that the well in the NWNWSW of Section 36 was used to temporarily provide water for the lands normally irrigated by the collapsed well a mile to the west in Section 35. IDWR records show that a new well was completed in the NWSW of Section 35 in July, 1993 to replace the old well at the same location under right 29-7291.

In summary, the well located in the NWNWSW of Section 36 was not moved from a mile west but was drilled by or prior to 1987 for irrigation of lands under right 29-7291, some of which were not developed but instead included under application for permit 29-7931A in 1990. A field exam was completed for permit 29-7931A in October of 2000. The field examiner confirmed use of the well in the NWNWSW of Section 36 for irrigation of 411 acres in the SW1/4 and W1/2SE of Section 36, and the NE1/4 and the N1/2SE of Section 35, T11S, R33E. However, the examiner also noted that the diesel

motor and pump that had been used for the well in Section 35 was being used for the well in the NWNWSW of Section 36 while the well in Section 35 was being repaired. IDWR will make a site visit and further investigate the diversion systems and use associated with these two wells.

Aerial imagery on file at IDWR from 2011 does not show any center pivot within the place of use authorized by permit 29-7931A, but much of the place of use appeared to be irrigated with either hand lines or wheel lines. IDWR staff will make a site inspection of the well and irrigated acres as soon as possible.

- D. Objection to the pumping of wells with rights 29-13949, 29-13950, 29-13951, 29-13952, 29-13984 and 29-13985 as they are adding to the depletion of Bannock Creek and on and under our meadows. The well west of the Arbon Highway was not pumped for twenty years. Objection also to the additional water these wells are pumping as more center pivots are added.

Partial decrees were issued by the SRBA Court for all of the rights identified in this objection in either December, 2003 or May, 2004. These are valid ground water rights in which the authorized places of use were irrigated with five center pivots in 2011. Aerial imagery on file at IDWR shows that three of the pivots were installed between 2006 and 2011, and two were installed by or prior to 2004. The land authorized to be irrigated by rights 29-13949 and 29-13951 did not appear to be irrigated in 2004 or 2006, but were irrigated in 2009 and 2011. The land under rights 29-13950, 29-13952 and 29-13985 was not irrigated in 2004, 2006 or 2009, but was irrigated in 2011.

Although you may dispute that some of the lands were not irrigated for some period of time, all of these rights are valid water rights, they have been decreed by the SRBA court, and they have been used within five years of the decreed dates or resumed prior to this year.

Review of 2011 aerial imagery shows that certain pivot corners not included within the place of use descriptions under the above referenced water rights may have been irrigated without proper authorization. IDWR will conduct a site investigation of these pivot corners.

Your objections regarding prior periods of non-use for many of the above referenced ground water rights were not raised during the SRBA. The rights have been partially decreed by the SRBA court and the rights have been beneficially used since the issuance of the partial decrees. The Department will not further investigate objections concerning past non-use of these ground water rights but will investigate several water right place of use questions as noted herein.

Your objections regarding injury to your surface water rights 29-13764 and 29-13528 by use of the above referenced ground water rights may be pursued by filing a delivery call in accordance with Rule 30 of the CMR's as previously discussed in this letter.

You objections regarding injury to meadows from ground water pumping cannot be addressed by IDWR or the CMRs unless you hold valid water rights for irrigation of the meadows in question. Your letter dated August 15, 2012 and all other related letters from other

Barry Williams Response
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interested parties concerned about injury to meadows lack specificity as to the location of the meadows and any water rights that are appurtenant to the meadows, except water right 29-13764.

Water District Creation

Your letter of August 15, 2012 raises a question about the creation of a water district for the Bannock Creek drainage. You correctly note that you had put in a call for delivery of your water on October 25, 2004 (right 29-13528 from Bannock Creek and right 29-10990 from Rattlesnake Creek). You also correctly note that IDWR responded to your October 25, 2004 request by explaining that Bannock Creek was not in a water district. However, IDWR also explained to you that because the Bannock Creek drainage is not included in a water district, you may proceed to make a delivery call in accordance with Rule 30 of the CMRs. Instead of submitting a delivery call pursuant to Rule 30, you petitioned IDWR on December 16, 2006 to create a water district. IDWR responded to this request on March 6, 2007 by explaining that creation of a district for the Bannock Creek drainage was not a Department priority at that time due to other water district creation commitments. IDWR has not further acted on your request for a water district given limited staff resources and other Department priorities, including organization of a new water district on the Snake River between Milner and Swan Falls dams, continued expansion of water districts in the Upper Salmon River basin, and ongoing organization of a water measurement district in the Upper Big Wood River area. IDWR does not have immediate plans to create a water district for the Bannock Creek drainage. Again, IDWR emphasizes that a water district is not required in order to make a delivery call under Rule 30 of the CMRs.

Burden of Proof

Your letter also states that the CMR's were established in 1994 but the "rules put all the burden on the senior surface water right holders." Although a senior surface water holder does have responsibility to initiate a delivery call and provide certain information as required by either Rule 30 or Rule 40 of the CMR's, the ultimate burden of proof concerning injury to senior surface water rights is borne by the holders of the junior priority right holders who are alleged to be causing the injury. The Idaho Supreme Court has found that the CMR's are constitutionally valid as written, Am. Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Res., 143 Idaho 862, 878, 154 P.3d 433, 449 (2007).

Please contact me directly at 208-287-4959 if you have questions concerning this matter.

Sincerely,

Tim Luke
Chief, Water Compliance Bureau

Encl: *Service List*

IDWR Correspondence to Barry Williams dated January 3, 2005

IDWR Correspondence to Barry Williams dated August 30, 2001

IDWR Conjunctive Management Rules

IDWR Rules of Procedure for Filing a Pleading IDAPA 37.01.01.230-301

C: Gary Spackman, IDWR Director
Garrick Baxter, Deputy Attorney General at IDWR
IDWR Eastern Region



WILLIAMS TEACUP RANCH

Travis T. and Heather P. Williams

Phone: 208.934.8817

1173 South 1700 East, Gooding, Idaho 83330

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SEP 19 2012

DEPARTMENT OF
WATER RESOURCES

Gary Spackman
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

September 12, 2012

Dear Mr. Spackman,

I am writing this letter in regards to what is happening with the Bannock Creek in Arbon Valley. For the last 8 years the creek and springs throughout the meadows that my family has owned for decades have completely dried up from early summer to late fall. This has coincided with the moving of Ward Farms irrigation well from the west side of the valley to the bottom of the valley where the head of Bannock Creek begins. Also during this time, another well on the south end of the meadows that had set idle for several years started pumping again. This well had belonged to Frank Johnson before the current owner bought the property and put a center pivot on it.

Although my residence is in Gooding, I still own property in Arbon Valley and this property is crucial to my farming and ranching operation. My cows summer on the range and I lease fall grazing from my family on their meadow ground in the fall, and we have no water for our cattle. We not only do not have any stock water, but there is about half the amount of feed as normal from the lack of sub moisture in the meadow. This not only affects us as ranchers, but the wildlife and native grasses of Arbon Valley.

As a kid growing up in the valley, I had never seen Bannock Creek itself or the springs on the meadow completely dried up. When I swathed the meadows for hay I had to be careful not to get stuck, and only parts of the meadow could be swathed because of water. Now, all the meadows are cut and yet my brother reports there is still less tonnage overall than before.

I would hope the IDWR office will investigate this problem and that an amicable solution can be reached concerning all parties. As we all know, water is a precious resource in this state. Thank you for your time and I look forward to your response.

Sincerely,

Travis T. Williams

Cc: Rep. Scott Bedke, Rep. Fred Wood, Rep. Donna Pence, Senator Stennett, Senator Cameron



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SEP 19 2012

DEPARTMENT OF
WATER RESOURCES

Mr. Spackman,

I am writing this letter because of the concern I have from Bannock Creek drying up in Arbon Valley, Idaho. I have cows in Arbon Valley and I have seen the affects that the surface irrigation wells have had on Bannock Creek and the meadows that Bannock Creek flows through. We all know that there is a limited water supply in the ground, and when too much water is pumped out of the ground it will affect springs and other riparian areas. The wells should be shut down they are junior water rights to the surface water rights that are being affected. What would an agency like the EPA think of the Idaho Department of Water Resources which is unwilling to shut down surface wells that are eliminating wildlife habitat such as riparian areas?

Trevor Williams

Trevor Williams

9-1-12

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AUG 31 2012

DEPARTMENT OF
WATER RESOURCES

Nelda M Williams
1554 W Bowen Ln.
Arbon Idaho 83212

Idaho Dept. of Water Resources
attn: Gary Spackman
PO box 83720
Boise Idaho 83720-0098
Dear Mr Spackman:

This letter concerns Bannock Creek and the Arbon Valley meadows.

Though my grandad Jesse N. Ward, homesteaded this valley in the early 1900's and my dad took the land over in the 1920's, I had never actually lived here the year around until my husband, D. T. (Sod) Williams began working for the Joseph N. Arbon family in the spring of 1943. Minus two years of service during WWII, he worked for them eight consecutive years.

As the Arbon family owned a portion of these meadows, my husband became familiar early on with Bannock Creek and the subwaters that always rose on these meadows. Even during past periods of ~~dry~~^{severe} drought, this creek never dried up.

We were privy to eventually own a large share of these meadows here in the valley and it has been devastating to watch the irrigation wells suck up all the water from the valley floor which is so necessary for the health of the meadows. When they begin pumping, Bannock Creek immediately dries up.

I lost my husband in 2001 but I still run some cows and rely on the meadows for fall feed when the cows come off the range.

Hay tonage has dropped considerably now for over twenty years, as has the meadows' necessary ~~regrowth~~^{regrowth} after haying. Our losses have been considerable. We are

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again, this year, scrambling to obtain feed from the newly opened up CRP.

Wells that were pumped very little ^{many} years ago, then lay idle until recently are now being pumped by new owners, who have been buying up ~~the~~ land that they purchased, expecting to be able to irrigate.

During years that my family ^{was} ~~there~~ artificially breeding some of our cows on these meadows, we were on them every day for ^{well} over a month. As soon as wells began pumping we watched as Bannock Creek would shut down and then dry up completely. Until the Dept. of Water Resources acknowledges this correlation between the wells and Bannock Creek, our meadows are doomed. Dry land plants are appearing in places that earlier supported rich meadow grass's. We are losing what little hope we had left.

The state has simply allotted more water rights to the pumpers than there is water in our state! and you appear to be allowing the wells priority over the much earlier ^{surface} water rights.

Respectfully Submitted,

Nelda M. Williams

P.S. My son, Barry said to keep my letter brief, that you wouldn't read it, if it was too long. I'll bet you have read it in its entirety! If you haven't, then back up and do so —

Jason & Dejanet Williams
1269 Mink Creek Rd.
Arbon, Idaho 83212

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AUG 31 2012
DEPARTMENT OF
WATER RESOURCES

August 25, 2012

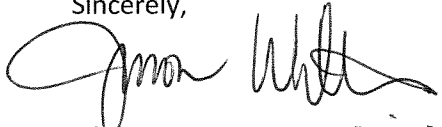

Gary Spackman
State Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Mr. Spackman

We are writing concerning the irrigation wells drying up Bannock Creek in Arbon Valley. We own 840 acres that straddles Bannock Creek for 2 ½ miles. Even in wet years the creek quickly dries up through our meadows after the wells start pumping. Prior to the wells the Meadows were home to many varieties of wildlife including frogs, ducks and other waterfowl. My grandmother is 88 years old. She said she has never seen Bannock Creek dry prior to the irrigation wells.

The water rights pertaining to the irrigation wells are: 29-2458A, 29-7931A, 29-13708, 29-13949, 29-13950, 29-13951, 29-13952, 29-13984 and 29-13985.

Sincerely,

Jason Williams
Dejanet Williams

Kevin North
1354 Newport
ARBOON IDAHO 83212

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AUG 24 2012
DEPARTMENT OF
WATER RESOURCES

MR. SPACKMAN:

I AM WRITING THIS LETTER CONCERNING THE DEPLETION OF WATER
ON MY PASTURE GROUNDS. IT SEEMS THAT THE PROBLEM IS MORE & MORE
WELLS BEING TAPPED WITH PIVOTS & WHEEL LINES. I SEEM TO HAVE PLENTY OF
WATER UNTIL THE IRRIGATION STARTS & THEN EVERYTHING DRIES UP.
ANYTHING THAT YOU COULD DO ABOUT THIS PROBLEM WOULD BE APPRECIATED.

Sincerely,

Kevin North
1354 NEWPORT
ARBOON IDAHO 83212
208-317-5587

Justin E. Williams
1302 Cow Camp Rd
Bancroft, Idaho 83217

August 20, 2012

Gary Spackman -State Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED
AUG 22 2012
DEPARTMENT OF
WATER RESOURCES

Dear Mr. Spackman:

Subject: Call for delivery of water for rights 29-13764 and 29-13528 from rights 29-2458A, 29-7931A, 29-13708, 29-13949, 29-13950, 29-13951, 29-13952, 29-13984 and 29-13985.

I own land in Arbon Valley and graze cattle there from June through November. During this time when grazing on the meadows in which Bannock Creek runs through we have not had any water in the creek for stock to water.

These wetlands and Bannock Creek itself have been dried up every year that the wells have been pumped.

Thank you for your consideration and I look forward to hearing from you.

Sincerely,

Justin E. Williams

Barry T. Williams
1277 Mink Creek Rd.
Arbon, Idaho 83212

RECEIVED
AUG 20 2012
DEPARTMENT OF
WATER RESOURCES

August 15, 2012

Gary Spackman "State Director"
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Mr. Spackman:

Subject: This is not a request for conjunctive management but a call for delivery of water for rights 29-13764 and 29-13528 from rights 29-2458A, 29-7931A, 29-13708, 29-13949, 29-13950, 29-13951, 29-13952, 29-13984 and 29-13985.

In addition to the call for our water, I have the following objections: I object to the pumping of the well with right 29-13708 as it has been abandoned for over forty years until this year.

I object to the pumping of the well with right 29-2458A as it was abandoned from 1974 until 1992 which was after the moratorium against new wells imposed by your department. Because this well dried up Bannock Creek, Fort Hall was able to take the water for rights 29-10990, 29-00476 and 29-00477. This well dried up a mile and one half of our meadows.

I object to the pumping of the well with right 29-7931A. Wards moved their pumping from a well a mile west to this well near the head of Bannock Creek in 1994. This well dried up an additional mile of our meadows and Bannock Creek to it's head. Ward's didn't pump this well in 2006 and we had water in this mile of our meadows for one year. I also object to the additional water being pumped by the addition of a center pivot.

I object to the pumping of the wells with rights 29-13949, 29-13950, 29-13951, 29-13952, 29-13984 and 29-13985 as they are adding to the depletion of water in Bannock Creek and on and under our meadows. The well west of the Arbon Valley Highway wasn't pumped for over twenty years. I also object to the additional water these wells are pumping as more center pivots are added.

When the well with right 29-2458A dried up Bannock Creek through a portion of our meadows in 1992, I called the Idaho Falls Office of the IDWR and objected to the pumping of the well to Keith Wilson, Ron Carlson, Harold Jones and others. I also talked to several in the Boise Office. At that time, at least to me, the IDWR did not recognize the correlation between ground water and surface water. I was told many things including, "we hate to see any water right forfeited," "the situation can be addressed after the adjudication is complete," "you will have to hire a hydrologist such as Jack Barnett," and "you will be able to call for your water once you receive the Partial Decree on your water right." During this time I discovered that my right 29-10990 had been included in the 1990 Fort Hall Indian Water Right Agreement. In addition to operating a ranch, I spent the next two years obtaining documents, writing letters, making phone calls and attending hearings to prove the Tribe had no right to my water right. Because this right was allowed to remain in the 1995 Agreement with a different number and a stipulation that my right would be met first, I had to go through this same night-mare in 2001 with the


IDWR and again in 2004 because the Tribe objected to my right. The IDWR had no records of the settlement reached in 1994. This took my time away from the problem of the wells drying up Bannock Creek.

On February 7, 1994, the IDWR came out with their Rules for Conjunctive Management of Surface and Ground Water. These rules put all the burden of proof on the senior surface water right holder.

On October 25, 2004, I put in a call for my water and was told the Bannock Creek Drainage had not yet been included in a water district. December 16, 2006 I petitioned the IDWR to include the Bannock Creek Drainage in a water district or districts. To this date nothing has happened.

We have been without water for 20 years. I would appreciate it if you would call me at 208-681-5357 when you receive this letter. Thank you.

Yours truly,



Barry T. Williams



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

March 6, 2007

Barry T Williams
1277 Mink Creek Rd.
Arbon, ID 83212

Stuart and Judy Adams
1271 Mink Creek Rd
Arbon, ID 83212

Re: Water District Creation – Bannock Creek Area

Dear Mr. Williams and Mr. and Mrs. Adams,

Mr. Williams' letter of December 16, 2006 and Mr. and Mrs. Adams' letter of January 30, 2007 have been forwarded to me for response. Both letters were submitted to the Director of the Idaho Department of Water Resources ("Department") and both letters ask the Department to create a water district in the Bannock Creek drainage. Your letters were forwarded to me since I am the primary Department contact regarding creation of new water districts.

The Department's priority for creation new water districts and/or modification of existing water districts in Idaho over the past year have been in the Eastern Snake Plain Aquifer ("ESPA") and the Upper Salmon River Basin. I recently held a hearing and am in the process of assisting the Director in issuing a final order expanding Water District No. 120 to include ground water rights in the lower Blackfoot River basin. This expansion of Water District No. 120 will complete a process of including all ESPA non-deminimis domestic and stockwater ground water rights in a water district.

Creation of a new water district in the Bannock Creek area has not been a high priority for the Department. This lack of prioritization for Bannock Creek is not intended to diminish your concerns or the importance of including Bannock Creek in a water district, but rather reflects the demands and urgency for water rights administration in other areas of the state, as well as the limited resources of the Department over the past several years. However, relative to your letters I have initiated the following action over the past month:

- Contacted appropriate representatives of the Shoshone-Bannock Water Resources Department concerning potential creation or expansion of one or more water districts in the Bannock Creek drainage for administration of both surface and ground water rights. Coordination with the Shoshone-Bannock Tribe is important since about half of the Bannock Creek drainage is within the Shoshone-Bannock Tribal Reservation and the Tribe owns water rights from Bannock Creek. I have brought this matter to the Tribe's attention and have asked for their input regarding your requests and possible water district scenarios. I was advised that the matter would be taken up with Elise Teton, Shoshone-Bannock Tribal Water Resources Department Engineer, when she returns from a leave of absence later this month.

SCANNED

SEP 14 2008

- Sought comments from representatives of the Aberdeen-American Falls Ground Water District (AAFGWD). The boundaries of the AAFGWD extend to the Bannock Creek drainage in southeast Power County outside of the Shoshone-Bannock Reservation. Some ground water right holders in the Bannock Creek drainage area are also members of the AAFGWD. The AAFGWD supports expansion of Water District No. 120 to all of the AAFGWD in Power County. Currently, Water District No. 120 is limited to just that area within the ESPA in Power County.
- Sought comments from the Water District No. 01 watermaster regarding inclusion of Bannock Creek surface water rights in Water District No. 01. The watermaster at this time prefers that Bannock Creek not be included in Water District No. 01.
- I am in the process of compiling a comprehensive list of surface and ground water rights in the Bannock Creek drainage, as well as the Michaud Creek drainage. This is an early step in considering options regarding creation of a new water district or expansion of one or more existing water districts in the area.

I am not comfortable at this time committing the Department to any specific timeline for creation of a water district in the Bannock Creek area. I am committed to completing a compilation of both surface and ground water rights in the drainage, continuing a dialogue with the Shoshone-Bannock Tribe, making one or more field visits to the area this irrigation season to inventory diversions, and outlining water district options and recommendation to the Director for the Bannock Creek and surrounding drainages. I can commit to completing these tasks sometime this summer. The Department can **consider** holding one or more hearings later this year regarding creation of a district or inclusion of the area in one or more water districts.

Before closing, I wish to respond to several items in Mr. Williams' letter. That letter states that I advised Mr. Williams that the Bannock Creek drainage "would most likely be included in Water District 01 and 120 the fall of 2006." I do not believe that I committed the Department to place the area in a water district in 2006 but instead indicated that the fall of 2006 was the earliest possible period the Department might hold a hearing(s) on the matter.

Mr. Williams stated in his letter and previous phone conversations that a water district is necessary to address further injury to his "classified wetlands" or meadows. Mr. Williams holds no water right(s) for these meadows and therefore cannot make a water delivery call to protect these meadows or wetlands. I see no direct benefit to Mr. Williams' meadows by including the Bannock Creek drainage in a water district.

Mr. Williams last letter also claims injury to water right 29-10990, an irrigation right from Rattlesnake Creek, tributary to Bannock Creek. Specifically, Mr. Williams alleges that junior ground water rights 29-2458A and 29-7931A affect water right 29-10990. The Department notes that the points of diversion for these particular junior ground water rights are located near Bannock Creek some nine to twelve miles southwest of Mr. Williams point of diversion on Rattlesnake Creek. Although the Department has made no investigation of injury between these junior rights and Mr. Williams's irrigation right on Rattlesnake Creek, we believe

it unlikely that any direct interference or injury exists between these rights given the significant distance between them. We do believe that the junior ground water rights cited by Mr. Williams or other junior water rights may have more potential to affect his one-inch stock water right on Bannock Creek.

Please contact me directly at 208-287-4959 if you have questions concerning this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Luke".

Tim Luke

Manager, Water Distribution Section

Cc: Ernie Carlsen, IDWR Eastern Region
Gary Spackman, IDWR Administrator
David Tuthill, IDWR Director
Elise Teton, c/o Gail Martin, Shosone-Bannock Water Resources Department
Bill and Deanna Curry
Ward and Sons Co., Inc.

Done

RECEIVED

FEB 1 2007

DEPARTMENT OF
WATER RESOURCES

Stuart & Judy Adams
1271 Mink Creek Rd.
Arbon, Idaho 83212

Jan 30, 2007

Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Mr. Tuthill

We own property in Arbon Valley in Power County. Bannock Creek flows through this property which is one of the reasons that attracted us to this place in 1999.

We are concerned about the water flow dropping dramatically over the last six years. In checking out the reasons for this we found that Bannock Creek is dry from its headwaters to Johnson's artesian well, for a good share of the year particularly during the summer when wells in the upper part of the valley are being pumped.

Judy was raised in this area and lived on the headwaters of this creek during the early 60's at which time the creek always flowed under the bridge at Andersons and on down through the fields.

We also discovered to our alarm that if the artesian well at Johnson's were to be diverted that there would be almost no water in Bannock creek at all. This is a very serious problem that needs attention. We know that drying up the riparian and the wetlands are harmful not only to the environment but to the wildlife and our pastures. It also has a huge impact on property values.

Bannock Creek is not in a water District and we believe it would be beneficial for future administration to be included into an existing district.

We will appreciate you taking action on this existing problem and doing whatever is necessary to include us into a water district.

We will appreciate your help
Stuart and Judy Adams

Stuart Adams

^a
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DEC 22 2006

DEPARTMENT OF
WATER RESOURCES

Barry T. Williams
1277 Mink Creek Rd.
Arbon, Idaho 83212

December 16, 2006

Karl J. Dreher
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

Dear Mr. Dreher:

Subject: Petition to include the Bannock Creek Drainage in a water district or districts.

I live in Arbon Valley in the Southeast corner of Power County. Bannock Creek originates in the South end of Arbon Valley near the Oneida County line and with it's tributaries, flows North 35 miles into the Snake River.

I am petitioning the Idaho Department of Water Resources (IDWR) to include the Bannock Creek Drainage in an existing water district or districts. Junior ground water rights 29-2458A and 29-7931A affect two of my senior water rights (29-13528 and 29-10990). Since 1992, Bannock Creek has been dry through my property. I have been without livestock water, 502.6 acres of my classified wetlands have been dried up and my irrigation water right 29-10990 has been directly affected.

I was told by several in the IDWR that once the partial decrees were issued, I would be able to call for my water. On October 25, 2004 I wrote you a letter calling for my water. On December 10, 2004, I talked to you and Glen Saxton by phone. I was told the IDWR couldn't proceed with my call for water because the Bannock Creek Drainage wasn't in a water district. The well with water right 29-2458A had been abandoned from 1975 until 1992 and the land was not irrigated by other means. This well was put into use after the moratorium against new wells was declared for this area. I asked you how the IDWR could recommend this well for adjudication under these circumstances and you said you didn't know but would check it out and get back to me. I never heard back.

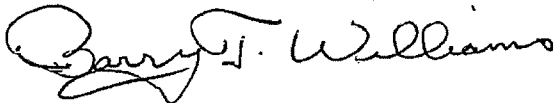
On January 3, 2005, Gary Spackman wrote me a letter advising me that surface and ground water rights in the Bannock Creek Drainage have not yet been included in a water district. He also advised me that I could petition for conjunctive administration under Rule 30 of IDWR's Conjunctive Management

SCANNED
SEP 1~ 2008

Rules. This rule was very prejudicial against me. Although I am the senior water right holder, I was to bear the burden of proof for establishing that the ground water and the surface water are hydraulically connected, that the ground water and surface water are a source of common water supply, that diversion by ground water right holders is diminishing surface water supplies and that the depletion in surface water flows caused by diversion under junior priority ground water rights materially injures my senior water right. I was also to serve the petition upon all known respondents (ground water users). Because of the heavy burden put on me, I had not yet filed the petition at the time of Judge Wood's ruling.

On July 14, 2006, Tim Luke told me the Bannock Creek Basin would most likely be included in Water District 1 and 120 the fall of 2006. Later I was told there wouldn't be time enough to work on including the Bannock Creek Basin. I surely hope that isn't the case. I have been without water since 1992 and depend on the water and wetlands for my livelihood.

Yours truly

A handwritten signature in cursive script that reads "Barry T. Williams". The signature is written in dark ink and is positioned above the printed name.

Barry T. Williams



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 3, 2005

BARRY T WILLIAMS
1277 MINK CREEK RD
ARBON ID 83212

Re: Your request for conjunctive management of surface water and ground water

Dear Mr. Williams:

This letter responds to your written letter, dated October 25, 2004, about depletions in Bannock Creek flows allegedly caused by ground water pumping near Bannock Creek.

You assert a direct hydraulic relationship between the ground water and surface water in the Bannock Creek drainage, and that pumping of ground water by Bill Curry causes Bannock Creek to dry up for between 1 ½ and 2 ½ miles. You also assert that the reduction of water flowing in Bannock Creek has reduced or eliminated surface water available to satisfy water right nos. 29-13528 and 29-10990.

Following your explanation of the facts, you state the following:

I have complained verbally to the Idaho Department of Water Resources and the Tribe for twelve years. I was told that once the adjudication process got to this stage, something could be done. There is no better testimony than seeing this situation in person. I have talked to Elise Teton with Tribal Water Resources about visiting this area. I would like for someone from the IDWR to attend.

I have talked to both well owners in the past but the wells are not going to be shut off until you enforce the law.

Your letter refers to a future meeting with "Elise Teton with Tribal Water Resources." If you want to arrange a meeting to discuss conjunctive management of water in the Bannock Creek drainage, a representative of the Idaho Department of Water Resources (IDWR) could attend. A tour of the area might be appropriate.

In addition to suggesting a future meeting, your letter refers to enforcement of the law and shutting off wells. IDWR is authorized to conjunctively administer the ground water and surface water in the Bannock Creek Drainage under IDWR's Conjunctive Management Rules. The ground water rights in the Bannock Creek Drainage are being decreed in the Snake River Basin Adjudication. Nonetheless, surface water and ground water rights in the Bannock Creek

SCANNED
SEP 18 2008

Drainage have not yet been included in a water district. As a result, the procedures for seeking conjunctive administration of the ground water and surface water in the Bannock Creek Drainage are written in Rule 30 of IDWR's Conjunctive Management Rules. Rule 30 requires that you file a petition for conjunctive administration with IDWR. The petition should be in the form of a pleading described in IDWR's Rules of Procedure. The petition should contain the following:

- a. A description of the water rights of the petitioner including a listing of the decree, license, permit, claim or other documentation of such right, the water diversion and delivery system being used by petitioner and the beneficial use being made of the water.
- b. The names, addresses and description of the water rights of the ground water users (respondents) who are alleged to be causing material injury to the rights of the petitioner in so far as such information is known by the petitioner or can be reasonably determined by a search of public records.
- c. All information, measurements, data or study results available to the petitioner to support the claim of material injury.
- d. A description of the area having a common ground water supply within which petitioner desires junior priority ground water diversion and use to be regulated.

At the time you file the petition with IDWR, you must also "serve the petition upon all known respondents" as required by IDWR's Rules of Procedure.

The petition may seek the creation of a water district or the enlargement of an existing water district presently responsible for delivering surface water flowing in Bannock Creek. When the petition is filed, IDWR may also initiate the process to include the water rights in a water district.

The filing of a petition for conjunctive administration creates a contested case before IDWR. IDWR will schedule a prehearing conference and ultimately a hearing to determine whether conjunctive administration is appropriate. As the petitioner, you will bear the burden of proof for establishing that the ground water and the surface water are hydraulically connected, that the ground water and surface water are a source of common water supply, that diversion by ground water right holders is diminishing surface water supplies, and that the depletion in surface water flows caused by diversion under junior priority ground water rights materially injures your senior water right.

Barry Williams
January 3, 2005
Page 3

I've enclosed a copy of the Conjunctive Management Rules for your reference. You may also access the Conjunctive Management Rules (IDAPA 37.03.11) and IDWR's Rules of Procedure (IDAPA 37.01.01) on the internet at:

<http://www2.state.id.us/adm/adminrules/rules/idapa37/37index.htm>.

If you have further questions about this letter, please call me at (208) 287-4943 or Ron Carlson in Idaho Falls at (208) 525-7161.

Sincerely,


Gary Spackman

Enclosure

cc. Eastern Region

7/14/06 - Williams requested a second copy of this letter & the enclosure. 7/17/06 Completed - dg.

KARL
RECEIVED

OCT 28 2004

DEPARTMENT OF
WATER RESOURCES

Barry T. Williams
1277 Mink Creek Rd
Arbon, Idaho 83212

October 25, 2004

Karl J. Dreher
Idaho Department Of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

Dear Mr. Dreher:

Subject: Delivery of water for water right 29-13528 and 29-10990 from rights 29-2458A and 29-7931A

Right 29-13528 is a stockwater right on Bannock Creek with a priority date of 7-1-1900. This right is on meadow land through which Bannock Creek flows for two and one half miles. Water right number 29-2458 is a well originally owned by Frank L. Johnson with a priority date of 1-19-1962. This well was pumped until about 1975, during which time it dried up Bannock Creek for one and one half miles through the North end of right 29-13528. The well was then abandoned until the spring of 1992. During this time, Bannock Creek flowed more than a sufficient stream of water; about 2 CFS at it's low.

Bill Curry is the current owner of right 29-2458A, a portion of right 29-02458. Bill started pumping this well the spring of 1992 and dried up Bannock Creek through the same one and one half miles. As a result, Fort Hall Irrigation took the water of rights 29-10990, 29-00476 and 29-00477 which have priority dates of 4-1-1892, 4-1-1892 and 4-1-1897 respectively. I talked to Bill but the well continued to pump. Except for about one month each spring, prior to pumping the well, this stretch of Bannock Creek has been dry since. The creek is dry downstream for about one mile until an abandoned artesian well flows in. If not for the artesian well, Bannock Creek would be dry for twelve miles to where West Fork Creek enters.

Water right 29-7931A has a priority date of 3-15-1990 and began pumping a large amount of water in about 1994. By 1996 this well dried the remaining one mile of Bannock Creek included in right 29-13528. By 1998 the well had dried Bannock Creek to its source.

I am sixty one years old and during my lifetime Bannock Creek has never been dry through this two and one half miles of meadow land except when one or both of these wells have been pumping. Five hundred three acres of these meadows are classified as wet lands. The wells have dried up the springs and ponds and lowered the water table over seven feet. These were wet meadows and without the influence of the wells, the water raised each October until the ponds were full and the swales would have standing water.

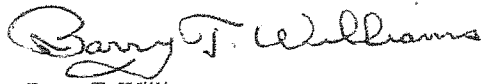
Water right 29-10990 is delivered according to the Bannock Creek Decree of 1907 and is in jeopardy because of Bannock Creek being dry. The water in Bannock Creek belongs to the Tribe and should be delivered.

This situation is not due to the drought. I have two springs to the East of Bannock Creek that are fed from a different source and they have varied little in their flow. I have observed this land and creek my entire life and have observed the rapid decline in water each time a well is started. No amount of moisture is going to rectify this situation as long as the wells are pumping each summer. This has been an accumulative situation getting considerably worse each year.

I have complained verbally to the Idaho Department of Water Resources and the Tribe for twelve years. I was told that once the adjudication process got to this stage, something could be done. There is no better testimony than seeing this situation in person. I have talked to Elise Teton with Tribal Water Resources about visiting this area. I would like for someone from the IDWR to attend.

I have talked to both well owners in the past but the wells are not going to be shut off until you enforce the law.

Yours truly,

A handwritten signature in cursive script that reads "Barry T. Williams". The signature is written in dark ink and is positioned above the printed name.

Barry T. Williams