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Department of Water Resources
Eastern Region

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 7, 2012

Wallace Creek Water Users

RE: Activating Water District 75-E, Wallace Creek

Dear Water User:

The Idaho Department of Water Resources (IDWR or Department) has received a number of complaints over the past month regarding the use of water and water rights on Wallace Creek. Additionally, the Department received an inquiry from the Lemhi County Sheriff's Office on August 27, 2012 regarding complaints it had received about unauthorized tampering of water diversions on Wallace Creek. On August 28, 2012, an IDWR staff representative, Nick Miller, investigated water diversion and water use on the creek. Lemhi County Deputy Sherriff's accompanied Mr. Miller during his investigation and Mr. Miller met with several Wallace Creek water users during his site visits. A summary of Mr. Miller's field investigation is enclosed with this letter.

In light of the recent water use complaints and the IDWR field investigation, it is clear that an active and duly elected watermaster is needed to distribute water in accordance with priority water rights on Wallace Creek and its tributaries. IDWR finds that it is not practicable to appoint a watermaster this year given that it is late in the irrigation season, the lack of measuring devices and controlling works in the system, the finding of certain water right irregularities and the lack of IDWR staff or resources in the area. As a result, IDWR recommends that users finish out the season by maintaining the level of diversions as found on August 28 unless notified differently by the Department. Water users are prohibited from adjusting any diversions on the creek except diversions that are authorized under their own water rights. Water users should not increase their diversions from what IDWR measured on August 28 except that the lower ditch users may continue to minimize or eliminate any leakage bypassing their diversion dam.

This letter is also intended to notify all water users within Water District 75-E, Wallace Creek and tributaries, that they must meet annually, starting in 2013, to elect a watermaster and fund the district as described in Idaho Code 42-605. If the water users fail to elect a watermaster and adopt a budget, IDWR will appoint a watermaster and set the watermaster's compensation in accordance with Section 42-605(8), Idaho Code.

IDWR suggests that the 2013 water district meeting be held on March 5, 2013 at a time and place convenient to the users. Bill Maxwell has agreed to act as the district liaison, so IDWR will mail him a meeting information request form in January 2013 to confirm the location, date, andtime. IDWR will then mail notice of the meeting to all water right holders in the district at least 21 days prior to the meeting date.

Additional actions by water users must be taken before a watermaster can perform his or her duties on the creek. Specifically, IDWR requires the following actions be taken:

- All water users must install permanent, lockable diverting and controlling works prior to diverting water in 2013;
- All water users must install standard measuring devices prior to diverting water in 2013;
- All water users must divert and use water at the locations described in their decreed water rights. As noted in the IDWR field report, water is being diverted from or used at locations not described or authorized by water rights. IDWR is immediately sending separate notices to any user whose use appears to be inconsistent with the authorized water rights. The notices will require the users to cease and desist from diverting water that may not be in conformance with their rights and/or bring their water use into compliance by following necessary administrative water right procedures.

In order to assure that users install adequate controlling works and measuring devices, the Department will soon issue a formal order requiring the installation of such devices prior to the 2013 irrigation season. Users who fail to comply with the Department's order may be subject to Notices of Violation and potential civil penalties. When the diversions in the district are equipped with adequate measurement and control devices, a watermaster will have the tools necessary to distribute the water in times of scarcity and can respond to changing water supply and demand to more effectively use the waters of Wallace Creek.

If you have questions regarding this notice or about water use and delivery during this remaining irrigation season, please contact Tim Luke or Nick Miller at 208-287-4800.

Sincerely,

Tim Luke
Chief, Water Compliance Bureau

Encl: Memorandum from Nick Miller to Gary Spackman and Tim Luke - Water District 75E Site Visit, dated September 5, 2012

C: See Attached Certificate of Mailing
IDWR Eastern Region
Lemhi County Sherriff's Office

MEMORANDUM

TO: Gary Spackman, Tim Luke

FROM: Nick Miller

DATE: September 4, 2012

RE: Water District 75E Site Visit

This memo is intended to document my August 28, 2012 visit to the Wallace Creek drainage. The purpose of my visit was to inventory the diversion systems and provide guidance regarding allocation of the waters of Wallace Creek pursuant to complaints by David Rhoades (a senior water right holder on Wallace Creek). I was accompanied by Deputies Steve Penner and Tom Whitson of the Lemhi County Sheriff's Office and met with Bill Maxwell (representing the users on the Lower Ditch), and Dale Gooby and Helen Silkman (representing users on the Savage Ranch Ditch). David Rhoades was unavailable for the meeting. The primary questions were related to whether it is appropriate to regulate the Savage Ranch diversion to provide water to senior water right holders that divert downstream. The secondary questions regarded who has the authority to make that determination and ensure that water is delivered accordingly.

Summary

I inventoried the Lower Ditch diversion, the Savage Ranch Ditch diversion, the water use from Maxwell's pipelines, and the Stokes/Moodie Ditch from the South Fork of Wallace Creek. I performed measurements of the amount diverted at the Stokes/Moodie Ditch, the Savage Ranch Ditch, the Lower Ditch, and the amount passing the Lower Ditch undiverted. I concluded that the water available at the Lower Ditch was insufficient to fill all water rights senior to those being diverted at the Savage Ranch diversion. However, the actual demand from the Lower Ditch is significantly less than all of the senior water rights and the uses include some that are inconsistent with senior water rights. As such, I recommended to Maxwell and Rhoades that they withdraw their call for regulation this season while they and others pursue plans to bring their water rights and water usage into conformance and plan to activate the water district in 2013 by electing a watermaster and equipping the diversions with adequate measurement and control. Maxwell and Rhoades each verbally agreed to this approach during telephone conversations following my visit.

Water Rights and System Overview

The uppermost diversions on the system are two ditches diverting water from the South Fork Wallace Creek under water rights with priorities of 6/1/1912. The Stokes/Moodie Ditch is uppermost and the Thomas Ditch is downstream less than one mile. The two ditches eventually combine before reaching the places of use, which are approximately 3-5 miles from the points of diversion. The Stokes/Moodie Ditch diverts with rocks and tarp dams and does not have a functional measuring device. Although I did not visit the Thomas Ditch, it reportedly has a similar diversion structure and is equipped with a measuring device of some type, likely a sharp-crested weir.

Approximately two miles downstream from the diversions on the South Fork is the Savage Ranch Ditch. That ditch diverts from Wallace Creek under water rights with priorities of 4/17/1923. The ditch diverts with a rock check structure into a steel fish screen/control structure. The ditch is equipped with a non-standard Cipolletti weir (the slope of the crest sides is steeper than 1:4).

Approximately 0.5 miles below the Savage Ranch Ditch, two pipelines divert from Wallace Creek.

- A six-inch PVC pipe diverts water to a Pelton wheel power plant approximately 1,200 feet below the intake. After passing the Pelton wheel, the water passes via an open ditch approximately 200 feet south to a pond that is approximately 70 feet in diameter and likely holds less than 0.3 acre-feet. The outlet of the pond has an overflow spill and is plumbed with a 3"- 4" pipe to supply irrigation to lands authorized to be irrigated under water rights 75-10330, 75-83C and 75-14577, and portions of 75-14716 and 75-14718. Other than the pipe at the outlet, no other irrigation or withdrawals are made from the pipe or pond. Water passing the overflow spill returns via approximately 80 feet of open channel to Wallace Creek.
- A 1.5 inch PVC pipe diverts water to a gravity sprinkler system that irrigates approximately 3.9 acres around the house and garage.

The head of the Lower Ditch is approximately 550 feet below the point where the pond overflow returns to Wallace Creek. This ditch is the last diversion from Wallace Creek before the confluence with the Salmon River, approximately 0.3 miles downstream. This ditch diverts from Wallace Creek under water rights with priority dates of 5/13/1898 and 6/1/1902. The ditch diverts with rocks and plastic tarps and has no measuring device. At the time of my visit, the ditch is blocked and cannot supply water to 20.6 acres of the 64.5 acres of lands authorized to be irrigated with water rights diverted via the Lower Ditch.

Water Supply Observations

Stokes/Moodie Ditch – On, approximately 0.4 cfs
Thomas Ditch – Not visited, reported to be on.
Savage Ranch Ditch – On, approximately 0.3 cfs
1.5" Pipeline – Off
6" Pipeline – On, approximately 0.5 cfs returning to the creek, the pipe take off was not diverting from the pond.
Lower Ditch – On, approximately 0.4 cfs diverted
Wallace Creek below Lower Ditch – approximately 0.2 cfs

Conclusions and recommendations:

Based on my observations and measurements, it appears that the supply of water in Wallace Creek is insufficient to supply the 1902 water rights in full. Given that approximately 0.4 cfs is diverted into the Lower Ditch and approximately 0.2 cfs is allowed to pass down the creek, approximately 0.6 cfs is available at the Lower Ditch without regulating junior users. As shown in the table below, water rights on the Lower Ditch senior to 1923 total 1.37 cfs. However, given that the ditch is blocked and some lower users (Farley, Wong-McClain, Lewis, and Shefts) have

no access to water, the maximum that can be demanded from this diversion is 0.94 cfs. Additionally, during a telephone conversation with David Rhoades, he stated that neither Yanoff nor Anderson have diverted or will divert water this season, so the actual maximum demand is 0.75 cfs. In other words, users on the Lower Ditch are short 0.15 cfs. However, both Maxwell and Rhoades are irrigating out of conformance with their senior water rights and it is not appropriate to regulate junior users to provide water to a use that is not authorized by a water right.

Water rights diverted at the Lower Ditch.

	diversion rate (cubic feet per second)			
Priority	Total	Non Deliverable	Reportedly Unused	Maximum Demand
1898	0.54	0.14	0.08	0.32
1902	0.83	0.29	0.11	0.43
Total	1.37	0.43	0.19	0.75

Users can demand regulation of junior water rights to provide water to senior users. If this is selected IDWR will:

- Instruct users on the Lower Ditch to cease bypass of water down Wallace Creek past the Lower Ditch. Although the current bypass was measured at only 0.2 cfs, this quantity is at least one-fourth of the total water right demand on the ditch so ditch users should make every effort to minimize the bypass. Junior users will likely be concerned if they are regulated and water is bypassing the senior's diversion.
- Instruct Maxwell to cease all irrigation from the 1.5" pipeline. The only water rights that authorize diversion from Wallace Creek in the NESE of Section 1, T22N R21E are junior to all other water rights on the creek and so must be regulated first. Furthermore, it appears that Maxwell is irrigating approximately 3.7 acres around his house without a water right. It is possible that 75-10330 is intended to cover some of that, but the water right as currently depicted does not appear to cover this area around the house and 75-10330 is a very junior water right (4/1/1949).
- Instruct Maxwell and Rhoades to cease irrigating from the pond. While it is possible that water right 75-10330 could authorize the storage in the pond and irrigation of Maxwell's land, it is junior and would be the first to be regulated. Neither Rhoades' nor Maxwell's senior water rights authorize diversion in the NESE of Section 1, T22N R21E (the location of the 6" PVC pipe). As such, their use of water from the pond constitutes an illegal diversion of water and must be curtailed prior to regulating junior users.
- Instruct users on the Savage Ranch Ditch to cease diverting Wallace Creek. Given the amount of water available, users at the Lower Ditch (excluding those users below the blockage and those users reportedly not using their rights) have rights to 0.75 cfs at the Lower Ditch under water rights senior to those of the Savage Ranch Ditch. The measurements I made indicate that regulating the Savage Ranch Ditch would provide the shortfall.

- Pursue notices of violation if users do not comply. Some type of formal notice should be sent to individual users who have any use that does not match their water rights.

Users on this system have the option to forego formal regulation this season and attempt to make do with the system as is. Given the shortness of the remaining irrigation season and the fact that the illegal and questionable uses will result in regulation of senior as well as junior water users, Maxwell and Rhoades have indicated that they would rather not pursue formal regulation this season. Nevertheless, IDWR should pursue a number of actions in the water district to address the illegal uses identified and to equip the district adequately to avoid or aid in the resolution of future disputes. Based on my observations, IDWR should require the following:

- Users equip the Lower Ditch with a permanent, lockable diverting and control works prior to diverting water in 2013.
- Users equip the Lower Ditch with an adequate measuring device. IDWR will provide a temporary measuring device for the remainder of this season, but a permanent structure should be installed prior to the start of the 2013 season.
- Maxwell must, prior to the 2013 season, bring his water rights into conformance with his water usage. He likely needs to file an application for transfer to authorize diversion of his senior irrigation water via the power pipeline diversion. Such a transfer would likely result in authorizing the storage pond under senior rights as well. Additionally, he must file a transfer or application for permit to authorize irrigating the full amount of ground he is currently irrigating around his house. Alternatively, he could reduce the irrigated acreage to that authorized by his rights.
- Rhoades must, prior to the 2013 season, bring his water rights into conformance with his water usage. He likely needs to file an application for transfer to authorize diversion of his irrigation water via the power pipeline diversion. Alternatively, he may cease irrigating via the pipe from the pond and instead irrigate all his ground via the Lower Ditch and obviate the need for a transfer.
- Users on Wallace Creek must make their water district (Water District 75-E) active in the spring of 2013 by holding an annual meeting to elect a watermaster and fund the district as described in Idaho Code 42-605. I suggest the meeting be held March 5th, 2013 at a time and place convenient to the users. Bill Maxwell has agreed to act as the district liaison, so IDWR will mail him a meeting information request form in January 2013 to confirm the location, date, and time. IDWR will then mail notice of the meeting to all water right holders in the district at least 21 days prior to the meeting date.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing **September 7, 2012 Letter to Wallace Creek Water Users RE: Activating Water District 75-E, Wallace Creek and the September 4, 2012 Memorandum RE: Water District 75E Site Visit** to the persons listed below:

JAMES R & JULIA GEIDEL
BOX 89
CARMEN ID 83462

WILLIAM ROBERT MAXWELL
PO BOX 256
CARMEN ID 83462

ROBERT & LESLIE J ANDERSON
PO BOX 852
KETCHUM ID 83340

WONG-MCCLAIN FAMILY TRUST
95 INVERLEITH TER
PIEDMONT CA 94611-3322

LAWRENCE R & JANET GOSACK
320 DIAMOND CREEK LN
SALMON ID 83467

GREG & SANDY BOURDON
VERA M HARTLEY TRUST
59 SAVAGE RANCH RD
SALMON ID 83467

L ARDEN & ILENE ARRINGTON
BOX 1110
SALMON ID 83467

FREDDE HOWARTH-NOTT
SEPARATE PROPERTY TRUST
PO BOX 1166
SALMON ID 83467

CHARLES C & VIRGINIA A THOMAS
PO BOX 785
SALMON ID 83467

NORMAN C & DOROTHY A OLSEN
PO BOX 131
CARMEN ID 83462-0131

JEFFREY V WAITE
PO BOX 75
CARMEN ID 83462

DICK WILLIAMS
LINDA BARINAGA
2655 LINDER RD
KUNA ID 83634

ROBERT HEBER OR JEAN STOKES
153 DIAMOND CRK RD
SALMON ID 83467

DAVID YANOFF
343 DIAMOND CREEK RD
SALMON ID 83467-5298

GREGORY MARTIN
CAROL ANNE SHEFTS
703 RIVERFRONT DR
SALMON ID 83467

DAN F FARLEY
C/O SLAVIN LAW OFFICE
116 N CENTER ST
SALMON ID 83467

JAMES H & MARTHA J MOODIE
MARY MOODIE
PO BOX 1211
SALMON ID 83467

RALSTON W & RACHEL ADAMS
RT 1 BOX 224-50
SALMON ID 83467

LAWRENCE L SHILEY
SHIRLEY E CLAY
PO BOX 136
CARMEN ID 83462

DAVID & BRENDA RHOADES
2283 S 55TH W
IDAHO FALLS ID 83402

RUSSELL & MICHELLE SNEED
9449 PERSHING AVE
ORANGEVALE CA 95662

DALE F GOOBY
18 SAVAGE RANCH RD
SALMON ID 83467

DALLAS A & VANCE LEWIS
357 DIAMOND CREEK RD
SALMON ID 83467

CHARLES W MUALEM
76 ALDOUS DR
SALMON ID 83467

PENSCO TRUST COMPANY
CUSTODIAN L ARDEN ARRINGTON
BOX 1110
SALMON ID 83467

LINDA K HEFFNER
WILLIAM R MAXWELL
PO BOX 134
SALMON ID 83467

DAVID JEFFREY ODELL
2742 ALPENGLOW RD
STEVENSVILLE MT 59870

Emalee Rushing

Emalee Rushing
Administrative Assistant