

WILLIAM T. GOODMAN
LARRY R. DUFF
D'EVEN A. TUFF
ALAN GOODMAN

LAW OFFICE
Goodman and Duff
CHARTERED
717 7TH STREET
BOX D
RUPERT IDAHO 83350

AREA CODE 208
TELEPHONE NO.
436-4774

September 13, 1986

RECEIVED

Department of Water Resources
Southern Region
2148 4th Avenue East
Twin Falls, Idaho 83301

Department of Water Resources
Southern Region

Attention: Mr. Loren O. Holmes, Southern Region Manager

Re: Water District 45-F - Vaughn Ditch and Marsh Creek

Dear Mr. Holmes:

As you may recall I represent Mr. and Mrs. Paul Penrod of Albion, Idaho. Mr. Penrod and his wife have water rights with a 1875 priority in the above District under Right No. 45-0308.

At a meeting of the Advisory Board and Water Resources in May of 1987 the use of the water by Don Merrill from Marsh Creek via the Vaughn Ditch on certain property he owned, which was not property to which the water was appurtenant was quite thoroughly discussed. After this meeting you were kind enough to direct a letter to the parties concerned, including the Watermaster of District 45-F dealing with the subject and the distribution of water under the existing water rights. I personally felt that this letter outlined the situation correctly and gave appropriate directions to the Watermaster in connection with the distribution of water to Mr. Merrill. Additionally, your letter correctly points out that if Parcel C, per your map, the Merrill property, is being irrigated, then Parcel D, the Penrod property is likewise entitled to water on a percentage basis.

This 1987 letter, following a complaint by Mr. and Mrs. Penrod, was followed up by your letter of July 9, 1988, directed to Mr. Kay Powell, Watermaster of District 45-F, in 1988, which further re-stated the conclusions made earlier as follows:

"A given water right may be used only on a tract where it is appurtenant and only in the amount specified."

Department of Water Resources
Atten: Mr. Loren O. Holmes
September 13, 1988
Page 2

We advise you that on or about July 3, 1988, Mr. Penrod's water delivery stopped on his Parcel D as shown on the map, which was attached to your May, 1987 letter. Subsequent to that date Mr. Merrill was using water on Parcel C shown on the same map and continued to use water on Parcel C as late as September 9, 1988.

We have photographs of the Merrill property, Parcel C, showing the irrigation system in full operation on September 9, 1988. Additional photographs show the Penrod parcel, Parcel D, in its condition at that time, which show no water having been applied to the parcel for a considerable period of time, specifically since July 3, 1988.

The letter of July 9, 1988, that you wrote to the Watermaster, Mr. Powell, it seems has placed a considerable burden on him in connection with water delivery. The principal difficulty is not with Mr. Powell and his efforts to make appropriate delivery of the water, but with Mr. Merrill, who continues to use water allocated to Parcel A, which has a 1873 right, on Parcel C, both of which parcels he owns.

As I view the matter, the Department of Water Resources must take appropriate action to terminate the unlawful and unauthorized use of water by Mr. Merrill to the detriment of other holders of water rights in the District.

I would point out to you that it is my understanding the Well owned by Mr. Merrill was measured by your Department as producing some 13" of water a few days ago. This water is discharged into the Vaughn Ditch at a point over one-half mile from the irrigation booster pump of Mr. Merrill. This amount of water, even if no loss is applied, is insufficient to run sprinkler lines, which operate some 32 to 36 sprinkler heads on Parcel C.

Additionally, I would point out that during a considerable period of time recently when Parcel C was being irrigated by Mr. Merrill, the Well of Mr. Merrill was not in use.

I would also point out to you that there is no continuous measuring devise on the Merrill Well and apparently no measuring devices on the Vaughn Ditch used by Mr. Merrill that can be used to determine precisely the amount of water he is using on Parcel C, or on Parcel A. This appears to me to be contrary to the

Department of Water Resources
Atten: Loren O. Holmes
September 13, 1988
Page 3

Statutes, Rules and Regulations applicable to water use and water rights. It has been my understanding that all persons having water rights must install appropriate measuring devices so that their water can be appropriately measured and determined at all times.

Further, it is my understanding that no water may be used on lands other than those lands to which such rights are appurtenant without an appropriate application and approval of Water Resources.

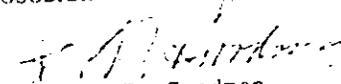
We request that the Department of Water Resources take appropriate action in this matter and of the allocation of water in District 45-F. Such action should require measuring devices of Mr. Merrill.

The other matter that was brought to my attention and also of immediate concern is that Mr. Chatburn, who holds a prior right to the Marsh Creek water has ceased to use the water to which he is entitled because his irrigation pump recently broke down and he has stated to Mr. and Mrs. Penrod that he does not intend to repair the same this year. This should make this water of Mr. Chatburn's available for irrigation use on Mr. Penrod's Parcel D immediately.

I am forwarding a copy of this letter to Mr. Kay Powell in connection with the situation as well as to other appropriate officials of Water Resources so that corrective action may be taken.

Very truly yours,

GOODMAN & DUFF


William T. Goodman

WTG:KH

Encl.

cc: Mr. Paul Penrod
Mr. Kay Powell
Mr. Gary Spackman
Mr. Norman Young

MEMORANDUM

DATE: 09-Feb-1989

FROM: Loren Holmes *LH*

TO: Gary Spackman

SUBJECT: Vaughn ditch, Water district 45-F

REC-11
FEB 13 1989

Department of Water Resources

Attached is some background information and a draft order to put the Vaughn ditch under the control of the watermaster.

The watermaster will not need to actually assume control of the ditch until at least April 1, but I would like to give notice of the order to the district by the March 6 meeting so they can budget for the additional salary.

Addresses of district officials and affected parties are as follows:

Bennie Chatburn P.O. Box 66 Albion, ID 83311	Wateruser
Bennie Smyer P.O. Box 573 Albion, ID 83311	Advisory Board
J. C. McKnight Six S Ranch Declo, ID 83323	Advisory Board
Paul Pencod Box 102 Albion, ID 83311	Wateruser
Don Merrill P.O. Box 486 Albion, ID 83311	Wateruser
Leo Bell Albion, ID 83311	Advisory Board
Dick Anderson Star Rt. Box 30 Albion, ID 83311	Advisory Board
John Kay Powell Box 83 Whitman Albion, ID 83311	Watermaster
Jim D. Kempton Star Rt. Box 28 Albion, ID 83311	Secretary

Approved by Board 12/15/80

DRAFT

ORDER IN THE MATTER OF APPOINTMENT OF A DEPUTY WATERMASTER TO MANAGE DISTRIBUTION OF WATER IN THE VAUGHN DITCH SYSTEM IN WATER DISTRICT 45-F, MARSH CREEK & TRIBUTARIES.

FINDINGS OF FACT

- 1) The Vaughn Ditch is a lateral ditch diverting water from Marsh Creek in State water District No. 45-F.
- 2) Delivery of water into the Vaughn Ditch is controlled by the Watermaster of District 45-F for further distribution to the users.
- 3) In 1988 and previous years, disputes have arisen regarding delivery of water within the Vaughn Ditch system.

CONCLUSIONS OF LAW

- 1) Under Title 42, Chapter 6 of the Idaho Code, the Department of Water Resources is charged with the duty to supervise and control the distribution of water in accordance with rights of prior appropriation. *SP License 42-602 to Supervise*
- 2) Supervision of deliveries of water in the Vaughn Ditch system is required to insure fair and equitable delivery under water rights.

ORDER

It is, therefore, hereby ordered:

- 1) That the Watermaster of District 45-F shall assume the duty of lateral ditch manager of the Vaughn Ditch or shall appoint a deputy watermaster for this function.
- 2) That the users of the Vaughn Ditch system shall install suitable measuring devices and locking control gates and valves on all diversions from the ditch.
- 3) That a measuring device shall be installed on the well under license 45-2422 to measure water discharged into the Vaughn Ditch. *measuring device shall be maintained authorized*
- 4) The watermaster shall have control of delivery of water under license 45-2422. *Administratively - no water to be used without license 45-2422*

maintain a permanent measuring device that records the amount of water entering the ditch at the well. The health maintenance record is required when dumping is required.

*9/10/80
J. J. [unclear]
[unclear]*

*YAKIMA COUNTY WATER DISTRICT NO. 45-F
ORDER IN THE MATTER OF APPOINTMENT OF A DEPUTY WATERMASTER TO MANAGE DISTRIBUTION OF WATER IN THE VAUGHN DITCH SYSTEM IN WATER DISTRICT 45-F, MARSH CREEK & TRIBUTARIES.*

VAUGHN DITCH WATER RIGHTS

Right No. 45-0307, priority 4/1/1873

OWNER	TRACT	AMOUNT (inches)
Merrill	18.8 Acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 6 T12S R25E	30
Chatburn	62.5 Acres in S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6 T12S R25E	62.5
City of Albion	Lands in city	67.5

Right No. 45-0308, priority 3/1/1875

OWNER	TRACT	AMOUNT (inches)
Merrill	NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 1 T12S R24E	4.25
Merrill	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 1 T12S R24E	4.25
Merrill	NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 1 T12S R24E	45.5
Penrod	Lot 6 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) Sec. 6 T12S R25E	26

Right No. 45-0318, priority 4/1/1885

OWNER	TRACT	AMOUNT (inches)
Merrill	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 1 T12S R24E	42.4
Merrill	Lot 5 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) Sec. 6 T12S R25E	36

Groundwater Right No. 45-2422, priority 4/9/1953

OWNER	TRACT	AMOUNT (inches)
Merrill	E $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 1 T12S R24E, Lot 5 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) Sec. 6 T12S R25E	50



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720

(208) 327-7900

March 8, 1989

45-F

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Mrs. Paul Penrod
P.O. Box 102
Albion, ID 83311

RE: Water distribution on the Vaughn Ditch

Dear Mrs. Penrod:

I acknowledge receipt of your letter which you sent to me February 28, 1989.

In response to your inquiry, enclosed is a copy of Chapter 9, Title 42 of the Idaho Code.

At your water district meeting, you should have received instruction about selecting a lateral manager. If the lateral manager is not selected, a user from the ditch can petition the watermaster in writing to appoint a lateral manager. Once the watermaster is petitioned, he must appoint the lateral manager. A lateral manager is authorized to perform the same duties as a watermaster, which would include requiring measuring devices.

In my opinion, the lateral manager should require measuring devices both for the well that is diverting water to the ditch, and for the diversion from the ditch. Furthermore, the lateral manager can charge each of the water users his respective share of the cost of administering the water.

Sincerely,

Gary Spackman, Manager
Water Right Permits Section

Enclosure

cc: Southern Region



CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

May 25, 1990

City of Albion
Kent Cooper &
Robert Adam &
Alta Penrod &
Bennie Chatburn &
Don Merrill
Albion, ID 83311

RE: Administration of Water Rights Flowing in the Vaughn Ditch

Dear Ladies & Gentlemen:

The following is the text of a letter mailed on or about May 15, 1990. Because of my failure to mail it to all the parties, I am reissuing the letter. Any time limitations set herein shall begin to run from the date of this letter.

For several years, the Department has attempted to resolve problems regarding the diversion and use of water diverted into the Vaughn Ditch. Despite continued efforts by the Department and the watermaster, these problems remain unresolved, partly because of the unwillingness of some of the parties to cooperate with each other.

The Department and the watermaster should not be required to continually respond to complaints of the various users which cannot be resolved without more stringent control on the diversions of water. While the Department recognizes that the parties may never resolve their differences, and are not willing to compromise, the Department and the watermaster should not continually be drawn into a fracas where much is alleged, but, because of unavailability of accurate measuring devices and data gathering equipment, cannot be proven. It appears that the Department's only alternative is to order more careful measurement and administration of the rights. As a result, the Department proposes the following:

1. Appointment of a lateral manager. The water users on a particular ditch should have the opportunity to organize a lateral ditch association, and choose their own lateral manager. This letter is notice that the users of water from the Vaughn Ditch should appoint a lateral manager. If you cannot agree, the watermaster, Don Danner, will appoint a lateral manager. He may appoint himself as the lateral manager. You may be required to

pay him compensation for his services in addition to what is paid to him as watermaster.

2. Installation of measuring devices for all users. There are inadequate measuring devices for proper administration of the water from the Vaughn Ditch. Water for different rights is commingled together. The watermaster cannot determine whose water is being diverted and where it is being diverted at any point in time. As a result, the Department has determined that measuring devices and lockable controlling works should be installed for all water right diversions from the Vaughn Ditch. The Department may also require separate delivery ditches for the rights to prevent improper commingling and use of water at the expense of another water user.

A ground water diversion owned by Don Merrill pumps water into the Vaughn Ditch which is ultimately redirected by a pump in the ditch. The redirected water irrigates land that is not a place of use under his earliest water right. It is difficult to determine how much water is diverted from ground water, and it is almost as difficult to determine how much water is being redirected, since neither pumping plant has a measuring device installed. The flow from the ground water source, however, has been estimated to be approximately 13 miner's inches. The two diversions have been correlated together by estimating the flow from a set number of sprinkler heads.

We have received multiple allegations of failure to pump ground water into the Vaughn Ditch when water is being withdrawn downstream, depriving earlier in time rights of their water. If true, this results in an enlargement of the lands irrigated by the original right to the injury of other water users.

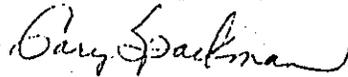
It is the responsibility of a person commingling ground water with surface water to provide evidence to the watermaster that he is pumping from the stream at the same rate water is being discharged to the stream, and that his well which pumps ground water to the surface source is always pumping whenever water is being withdrawn under the water right. No measuring devices are in place to establish this.

While it may be a financial burden to do so, the Department is considering ordering installation of monitoring devices which will monitor when each of the pumps is turned on and off, and also to monitor the flow rate each time the pumps are on. This would result, however, in substantial expense to the owner of the well. The Department will allow continued commingling of the well water with the surface water provided the well diverting into the Vaughn Ditch is pumping at all times when the lower pump is diverting water. If the Department of Water Resources receives, by competent affidavit, evidence that the well is not being pumped at the time water is being diverted on any land to which the 1873 right is not appurtenant, the Department of Water Resources will immediately issue an Order to Show Cause to the

owner of the well requiring that he appear before the Department and show cause why the Department should not require expensive monitoring devices, and why the Department should not impose penalties for illegal diversion of water under Idaho Code § 42-351.

The Department of Water Resources will grant a grace period of thirty (30) days from the date of this letter to allow you the opportunity to elect a lateral ditch manager, and to suggest the location and configuration of measuring devices and a delivery system which will suitably deliver the respective rights. Should you fail to submit the information, the Department will impose a system of measuring, and will also ask the watermaster to appoint the lateral manager if you have not yet chosen one.

Respectfully,



GARY SPACKHAN, Manager
Water Right Permits Section

GS:js

cc. Southern Region
Don Danner



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

May 15, 1990

Alta Penrod
P.O. Box 102
Albion, ID 83311

Bennie Chatburn
Albion, ID 83311

Don Merrill
Albion, ID 83311

RE: Administration of Water Rights Flowing in the Vaughn Ditch

Dear Parties:

For several years, the Department has attempted to resolve problems regarding the diversion and use of water diverted into the Vaughn Ditch. Despite continued efforts by the Department and the watermaster, these problems remain unresolved, partly because of the unwillingness of the parties to cooperate with each other.

The Department and the watermaster should not be required to continually respond to complaints of the various users which cannot be resolved without more stringent control on the diversions of water. While the Department recognizes that the parties may never resolve their differences, and are not willing to compromise, the Department and the watermaster should not continually be drawn into a fracas where much is alleged, but, because of unavailability of accurate measuring devices and data gathering equipment, cannot be proven. It appears that the Department's only alternative is to order more careful measurement and administration of the rights. As a result, the Department proposes the following:

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2. Installation of measuring devices for all users. There are inadequate measuring devices for proper administration of the water from the Vaughn Ditch. Water for different rights is commingled together. The watermaster cannot determine whose water is being diverted and where it is being diverted at any point in time. As a result, the Department has determined that measuring devices and lockable controlling works should be installed for all water right diversions from the Vaughn Ditch. The Department may also require separate delivery ditches for the rights to prevent improper commingling and use of water at the expense of another water user.

3. A ground water diversion owned by Don Merrill pumps water into the Vaughn Ditch which is ultimately rediverted by a pump in the ditch. The rediverted water irrigates land that is not a place of use under his earliest water right. It is difficult to determine how much water is diverted from ground water, and it is almost as difficult to determine how much water is being rediverted, since neither pumping plant has a measuring device installed. The flow from the ground water source, however, has been estimated to be approximately 13 miner's inches. The two diversions have been correlated together by estimating the flow from a set number of sprinkler heads.

We have received multiple allegations of failure to pump ground water into the Vaughn Ditch when water is being withdrawn downstream, depriving earlier in time rights of their water. If true, this results in an enlargement of the lands irrigated by the original right to the injury of other water users.

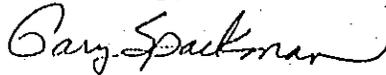
It is the responsibility of a person commingling ground water with surface water to provide evidence to the watermaster that he is pumping from the stream at the same rate water is being discharged to the stream, and that his well which pumps ground water to the surface source is always pumping whenever water is being withdrawn under the water right. No measuring devices are in place to establish this.

While it may be a financial burden to do so, the Department is considering ordering installation of monitoring devices which will monitor when each of the pumps is turned on and off, and also to monitor the flow rate each time the pumps are on. This would result, however, in substantial expense to the owner of the well. The Department will allow continued commingling of the well water with the surface water provided the well diverting into the Vaughn Ditch is pumping at all times when the lower pump is diverting water. If the Department of Water Resources receives, by competent affidavit, evidence that the well is not being pumped at the time water is being diverted on any land to which the 1873 right is not appurtenant, the Department of Water Resources will immediately issue an Order to Show Cause to the owner of the well requiring that he appear before the Department and show cause why the Department should not require expensive monitoring devices,

and why the Department should not impose penalties for illegal diversion of water under Idaho Code § 42-351.

The Department of Water Resources will grant a grace period of thirty (30) days from the date of this letter to allow you the opportunity to elect a lateral ditch manager, and to suggest the location and configuration of measuring devices and a delivery system which will suitably deliver the respective rights. Should you fail to submit the information, the Department will impose a system of measuring, and will also ask the watermaster to appoint the lateral manager if you have not yet chosen one.

Respectfully,



GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc. Southern Region
Don Danner

ATTORNEYS AT LAW

DOUGLAS R. WHITPLE
DENNIS R. HYINGTON
STANLEY HOLLOWAY
KAY R. JONES
KEE "SRIF" CARTER

PO. BOX 188
111 WEST 15TH STREET
BURLEY, IDAHO 83318
(208) 678-0404

RECEIVED
AUG 6 1990

August 2, 1990

Department of Water Resources
Gary Spackman, Manager
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Re: Administration of Water Rights Flowing in
the Vaughn Ditch

Dear Mr. Spackman:

Mrs. Alta Penrod and her husband, Paul, have recently contacted me concerning an on going problem which they have with their water rights and one of their neighbors, Mr. Don Merrill.

I would like to refer you to your May 15, 1990, letter, page 2, last paragraph, wherein you state:

"The Department will allow continued commingling of the well water with the surface water provided the well diverting into the Vaughn Ditch is pumping at all times when the lower pump is diverting water. If the Department of Water Resources receives, by competent affidavit, evidence that the well is not being pumped at the time water is being diverted on any land to which the 1873 right is not appurtenant, the Department of Water Resources will immediately issue an Order to Show Cause to the owner of the well requiring that he appear before the Department and show cause why the Department should not require expensive monitoring devices . . .".

According to information given to Mr. & Mrs. Penrod two years ago by Mr. Loren Holmes, the well pump is capable of diverting 13 inches of water into the Vaughn Ditch. As you know, this well water is commingled with the surface water and is used to irrigate land that is not appurtenant to the 1873 right. The land that is irrigated with this 13 inches of water is irrigated through the use of two lines or hand lines with 16 sprinklers to a line amounting to a total of 32 sprinklers. The amount of water it takes to continually run these 32 sprinklers is considerably more than the 13 inches of water which Mr. Merrill

Gary Spackman, Mangor
August 2, 1990
Page 2

is putting into the Vaughn Ditch through the well water. The result of Mr. Merrill diverting more than the 13 inches of water for his use is that the Penrod's water was shut off on July 25, 1990, because there is not sufficient water to service everyone.

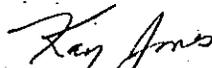
As you have been informed by prior letters of Mrs. Penrod, she has a prior right to Marsh Creek water than does Mr. Merrill, and, therefore, he should be shut off prior to the Penrods, except for the 13 inches of well water.

The Penrod's would like to suggest two possible solutions to this problem. The first solution is that the Department of Water Resources issue an order to show cause requiring Mr. Merrill to appear before the Department and show cause why the Department should not require the extensive monitoring devices. The second alternative solution is that the Department require the water master to run the Marsh Creek water in its old original channel instead of going through the Vaughn Ditch. This would still allow the 1873 water right uses, Mr. Chadburn and Mr. Skaggs, to use their water rights as well as Mr. & Mrs. Penrod. It would also make it possible for the water master to run the water in the Vaughn Ditch on Mondays so that the City of Albion could use their water rights on Monday and then be turned back to the old channel on Tuesday. This would also not interfere with Mr. Merrill's use of his 13 inches of water that he places into the Vaughn Ditch from his well and diverts onto other parts of his lands. This alternate method to resolve the problem could be done very quickly so that the Penrods and other prior in time water users receive their water this year without the necessity of holding an order to show cause hearing or requiring expensive monitoring devices.

I would appreciate a quick response from you and if you have any questions regarding this matter, please do not hesitate to contact either myself or Mr. & Mrs. Penrod. We appreciate your time and consideration of this matter.

Sincerely,

BYINGTON, HOLLOWAY, WHIPPLE
& JONES, Chartered


Kay Jones

KJ/rk

RECEIVED

AUG 10 1990

Department of Water Resources
Southern Region Office

Albion, Idaho
July 31, 1990

Dept. of Water Resources
Gary Spackman, Manager

Dear Sir:

In regards to water rights on the Vaughn Ditch, we are satisfied with the water being measured at the head of the ditch.

The Water Master Donald Danner has agreed to turn the water to Penrods which eliminates the need of a lateral manager.

We do not feel we have to have measuring devices for all users. Earlier rights have not been deprived of their water. We have all managed to get along with the exception of Penrods, who are constantly making trouble as to how the water is handled even though they have their right amount of water and often more than the amount.

Water users of Vaughn Ditch
Decree Date and amount of water

<u>Robert Adams - Dick Adams</u>	80"	08-01-1881
<u>Kent Cooper</u>	160"	04-01-1880
<u>Paul Penrod</u>	26"	03-01-1875
<u>Arlo Montgomery / George Montgomery</u>	80"	07-01-1876
<u>City of Albion</u>	60"	04-01-1873
<u>Ben Chatburn</u>	62.5"	04-01-1873
<u>Don Merrill</u>	30"	04-01-1873
	54"	03-01-1875
	160"	04-01-1885
	66"	04-12-1892

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RECEIVED

AUG 21 1990

AUG 23 1990

Department of Water Resources

Department of Water Resources
Southern Region Office ORDER

IN THE MATTER OF THE APPOINTMENT
OF A LATERAL MANAGER FOR THE
VAUGHN DITCH LATERAL

Whereas, the waterusers on the Vaughn Ditch lateral have been unable to select a lateral manager before April 1, as provided under Idaho Code § 42-908 and,

Whereas, the waterusers are unable to distribute the water among the waterusers in a peaceful manner that is agreeable by all parties and,

Whereas, Idaho Code § 42-909 provides that the watermaster may appoint a lateral manager upon written demand of one wateruser if the waterusers fail to select a manager under the provisions of Idaho Code § 42-907, or Idaho Code § 42-908,

Whereas, the watermaster of Water District No. 45-F, which delivers water to the subject lateral, has received a written request that a lateral manager be appointed,

NOW THEREFORE, pursuant to Idaho code § 42-909, I Don Danner, Watermaster Water District No. 45-F do HEREBY ORDER and APPOINT myself to serve as lateral manager on the Vaughn Ditch lateral for the 1990 irrigation season.

The lateral manager shall properly apportion and distribute the water from the lateral according to the amount entitled to each wateruser.

The lateral manager shall have all the powers described under Idaho Code § 42-907 and Idaho Code § 42-910, including but not limited to:

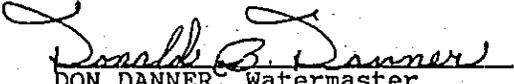
The power to require each wateruser to provide such wateruser's proportion of the amount of labor, material or money reasonably necessary for the proper repair and maintenance of the lateral.

The power to require the installation of measuring devices and lockable controlling works for all water right diversions, including groundwater diversions commingled with surface water, and the power to require separate delivery ditches &/or installation of head-gates and checks reasonably necessary to distribute the water between the waterusers.

IT IS FURTHER ORDERED that the lateral manager be compensated for services as follows: N/A

as provided in Section 42-909 and 42-910.

Dated this 17 day of August, 1990.


DON DANNER, Watermaster
Water District No. 45-F



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KETH HIGGINSON

DIRECTOR

August 14, 1990

Don Danner
Albion, ID 83311

RE: Order Appointing Lateral Manager for Vaughn Ditch

Dear Don:

Enclosed is a copy of a letter from Alta Penrod requesting that a lateral manager be appointed for the Vaughn Ditch. Pursuant to this request, we have drafted an order which you may use to appoint a lateral manager.

Please complete and sign the order, and return the original to this office. Copies of the order should be distributed to all users on the Vaughn Ditch. If you wish, we can distribute copies of the order to the appropriate users. However, your list of users and addresses is probably more complete and updated than the Department's.

Although the order does not specify a particular scheme for measuring and distributing the waters of the Vaughn Ditch, we want to stress that the Department is available and willing to provide assistance upon your request. Please do not hesitate to contact Loren Holmes or myself if you have any questions or need assistance of any type.

Sincerely,

Gary Spackman, Manager
Water Right Permits Section

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Department of Water Resources

September 10, 1990

Mr. Loren O. Holmes
Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, ID 83301

Subj: Administration of Water Rights - Vaughn Ditch

Ref: (a) Spackman letter of 14, August, 1990, w/Appointing
Order for Lateral Manager - Vaughn Ditch.

The purpose of this correspondence is to respond to the requirements of ref. (a) and to comment on the continuing conflict over the distribution of water through the Vaughn Ditch.

It has been several years since the water users of this lateral ditch have invested in the installation of headgates, measuring devices, and the maintenance of the subject ditch. In some instances users have never complied with this requirement. However, the Vaughn Ditch is not the only one within this water district that has this same deficiency. Even though this issue has been generated by a user on the Vaughn Ditch, for consistent and equitable enforcement of the code should it not apply across the entire water district?

I am told that this long standing conflict has spanned several watermasters, numerous attorneys, and many water resource personnel, without any satisfactory resolution. It is apparent to the undersigned that even though he has refused to be pushed or pulled into a compromising position by the local combatants, that he can not resolve this problem either. This is evident by the unfounded and untrue charges that have been made, and elevated to the regional and state level. Therefore, the help and/or assistance offered by the Department of Water Resources, in recent correspondence will be needed and greatly appreciated.

Based upon the above, it is requested that the following actions be considered as a viable approach to addressing the problem at hand: For purposes of credibility and enforcement authority, your office issue an order to all water users in this district containing the following instructions.

- A. All water users will establish and record approved points of diversion.
- B. That approved lockable headgates, with measuring devices be installed at all diversion points.

- C. Where multiple users receive water through the same lateral ditch, at the same time, that provisions be made to divert water through secondary ditches. This is to preclude any user from placing dams in the lateral ditch used to distribute water to more than one user.
- D. That ground water and surface water will not be commingled in the same ditch. If commingling is allowed, that measuring devices be installed at both the input and discharge points of the delivery ditch.
- E. That no booster pumps can be directly located in the creek/ditch channel.

It is believed that all water users should be given notice that these conditions must be met prior to the beginning of the 1991 irrigation season, 1, March 1991. The watermaster should be authorized to refuse the delivery of any water, if these conditions are not met.

It is further requested that a representative from your office meet with the watermaster for the purpose of identifying specific locations for installing the required headgates and measuring devices. The watermaster will make himself available at any time most convenient to you. It is hoped that you will give these recommendations consideration, and advise the undersigned as soon as possible.

Sincerely,



Donald B. Danner
Watermaster

cc: Mr. Gary Spackman
Idaho Dept. of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

August 17, 1990

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Alta Penrod
P.O. Box 102
Albion, ID 83311

Dear Mrs. Penrod:

I have received your letter and the letter from your attorney. An order should be issued shortly whereby Don Danner appoints himself as the lateral manager. He will have the authority to order measuring devices installed on the Vaughn Ditch as needed for delivery of water. We will work closely with Don to install the measuring devices.

I am concerned about allegations that you have made regarding money being paid to officials to disregard your problem. The statement alludes that perhaps Don Danner, Loren Holmes or other Department personnel have taken money in exchange for deferential treatment to Don Merrill. I think I know the integrity of Loren Holmes and Don Danner well enough to conclude that both are beyond reproach. My personal opinion about Don Danner is that he has worked extremely hard to make sure that all the parties receive their water, and that he is delivering the water according to law. Unfounded allegations of bribery do not help your case. Those who attempt to assist, if bombarded by such allegations, could begin to doubt the truthfulness of other information being received. Please do not compromise your position by that which, in my opinion, has no foundation in fact.

You have stated a preference that Bennie Chatburn's water be delivered in the natural Marsh Creek channel rather than through the Vaughn Ditch. Bennie Chatburn has expressed a desire to continue to divert water through the Vaughn Ditch, concluding that there is less loss when delivered through the ditch than through the natural stream channel. As a result, I believe that Bennie Chatburn should be entitled to continue to divert water through the Vaughn Ditch if he chooses.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Loren Holmes, Southern Region
Don Danner
Kay Jones



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State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

September 4, 1990

Alta Penrod
P.O. Box 102
Albion, ID 83311

Dear Mrs. Penrod:

I regret that our conversation on August 29, 1990, was not more pleasant.

I have spoken to Don Danner. He is drafting recommendations for the installation of measuring devices, including their locations and the types of devices which must be installed. We will assist him in this function.

I am also writing a letter to Don Merrill which I will forward to you. The letter will reiterate that at all times his well must discharge into the Vaughn Ditch while his sprinklers are operating. In my opinion, failure to do so, regardless of the cause, whether his own or an act of God is cause for the Department to pursue civil penalties against him for illegal diversion of water.

You informed me that you had turned the water out of the Vaughn Ditch, preventing delivery of any water but Merrill's well water into the Vaughn Ditch. Interference with headgates controlled by a watermaster is a criminal offense under Idaho Code Title 18, Chapter 43. Any further interference with the headgates or the delivery of water in the Vaughn Ditch will result in possible criminal charges being brought against you.

You have raised several issues in your letter. I do not intend to advise you regarding remedies which you may seek if you are not satisfied with the Department's actions. I do intend, however, to address questions about delivery of Merrill's well water, and the surface water in Marsh Creek.

Loren Holmes measured the flow from Merrill's well and determined that it was flowing approximately 20 or 21 inches of water. He also determined, by his calculations, that Merrill was diverting less water than was being pumped into the Vaughn Ditch, as I recall, approximately 18 inches. By Loren's measurement, Merrill is not diverting any more water than he is pumping into the Vaughn Ditch.

With respect to rotation, the three parties entitled to the

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1873 right are rotating between themselves. This rotation has nothing to do with the water which Merrill withdraws from the Vaughn Ditch, except that the Marsh Creek water probably assists in carrying the well water diverted by Merrill. With the carrying ability of the Marsh Creek water, Merrill probably does not lose significant water from his well to his sprinkler pump. The above is the explanation of rotation and justification of Merrill's continuing use of his sprinkler system.

I had hoped that I could possibly resolve this dispute. I am disappointed that relationships between the parties and the Department employees cannot be more cordial. Unfortunately, I realize that we cannot always satisfy the public and that the public must, at times, seek legal remedies to enforce their rights if they feel they have been mistreated.

Respectfully,



GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Don Danner
Loren Holmes
Don Merrill
Kay Jones