



# Shoshone-Bannock Tribes

TRIBAL WATER RESOURCES

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MAY 19 2008

DEPARTMENT OF  
WATER RESOURCES

May 14, 2008

Tim Luke, Water Distribution Section Manager  
Idaho Department of Water Resources  
322 East Front Street  
PO Box 83720  
Boise ID 83720-0098

**RE: Order Requiring Measuring Devices and control works on diversion from Toponce Creek, Shoshone-Bannock Tribal Water Rights**

Dear Mr. Luke:

On February 28, 2008 the Idaho Department of Water Resources (IDWR) issued a preliminary order requiring the installation of measuring devices and control works for diversions in Basin 29. Pursuant to Article 8.2 of the "1990 Fort Hall Indian Water Rights Agreement," affirmed by Court decree in 1995, the Shoshone-Bannock Tribes, not the State administers all Tribal water rights. Water Rights 29-231, 29-238, and 29-239 are Tribal water rights under the administration of the Tribes. We do not believe the State has authority to require measurement devices for these water rights.

However, in the spirit of cooperation the Tribes will endeavor to observe the order for water rights diverting from Toponce Creek provided that such measures do not adversely impact the Tribes' water rights. The Tribes own water rights as shown in the table below in the Toponce Creek area:

Water Right	POU	Source / POD	Diversion Rate (cfs)
29-231	Allotment 61	Toponce Creek	1.59
29-238	Allotment 71	Toponce Creek	1.733
29-239	Allotment 72	Toponce Creek	1.679

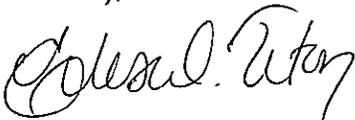
Allotment 61 is currently being leased by King Creek Grazing Association (KCGA), as it has been for the past 40 years. Allotment 61 is irrigated by sprinklers through the gravity pipeline system installed by KCGA in 1994. The KCGA pipeline system diverts water from Toponce Creek in the canyon, 1.5 miles upstream of Allotment 61. The Tribes are applying to IDWR to add the KCGA pipeline point of diversion as a point of diversion on water right 29-231 which serves Allotment 61. At the present time, the original point of diversion for Allotment 61 directly from Toponce Creek is not in use, in part because the KCGA pipeline diversion provides pressure in the system to operate sprinklers. It is anticipated that Allotment 61 will continue to be served from the KCGA pipeline system. It is proposed that at this time the IDWR order for water right 29-231 (Allotment 61) would be fulfilled by the installation of a measurement device and control works on the KCGA pipeline diversion by KCGA. The original point of diversion for water right 29-231 from Toponce Creek, at a point on or adjacent to Allotment 61 would not require a measurement device and control works.

Allotments 71 and 72 are currently being leased by CV Ranches (c/o Rondo Perkins). Attempts to contact Mr. Perkins regarding his use of Toponce Creek water have not been successful. More information is needed from Mr. Perkins to determine how, where, and to what extent water is diverted from Toponce Creek to service irrigation needs on Allotments 71 and 72. At this time, the Tribes propose to continue attempts at contacting the lessee and characterize the current water diversion practices. If Mr. Perkins is diverting water from Toponce Creek, the Tribes would agree to establish a measurable diversion structure in order to comply with the IDWR order. The placement of the diversion structure will need to be discussed with Mr. Perkins based on the lay of the land and his water use. If Mr. Perkins does not currently divert water from Toponce Creek for Allotments 71 and 72, then the Tribes would propose that no measurement or control device be installed at the present time.

Additionally, the water rights for allotment 71 and 72 belong to the Tribes but the land is held in trust for individual Indian landowners. In order to ensure that individual allottee rights are not affected notification and consent to the Indian landowners, that devices may required to be installed on their land, is required. This process would need to take place through the Bureau of Indian Affairs Realty Department.

Please let me know if the proposed actions stated above are acceptable to IDWR. Feel free to contact me at 208-239-4580 or [eteton@shoshonebannocktribes.com](mailto:eteton@shoshonebannocktribes.com).

Sincerely,



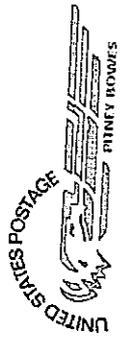
Elise D. Teton  
Tribal Water Engineer

CC: file  
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Shoshone-Bannock Tribes Water Resources Commission  
Eric LaPointe, BIA Fort Hall Superintendent  
Steve Hebdon, Watermaster District 29

*The Shoshone Bannock Tribes*

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