



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

August 19, 2013

Lynn A. Herbst
P.O. Box 21
Tendoy, ID 83468

RE: Lemhi River Water Delivery and Unauthorized Use

Dear Mr. Herbst:

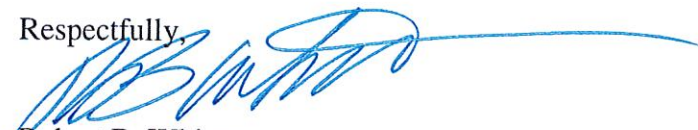
As you are aware, the Lemhi River and associated irrigation diversions have recently suffered some amount of curtailment by the Lemhi River Watermaster due to short water. The Idaho Department of Water Resources (Department) has been receiving complaints that some uses of water under water rights subject to curtailment have continued. Recently, Department officials were notified that you may be continuing to irrigate lands for which the water rights have been curtailed.

This office has conversed with you regarding your water use and that some of your water rights are subject to the curtailment. The Department has also communicated with the watermaster regarding water rights that have been curtailed. The purpose of this letter is to provide official notice that diversion or use of water subject to a curtailment is considered an unauthorized diversion. Your irrigation rights that describe the Lemhi River as the source must use Lemhi River water and must also be in priority. Use of water from other sources must be authorized by a valid water right.

The Department hereby requires that you **cease and desist** any water use that is not covered by a valid and deliverable water right. This includes irrigation from other sources or the use on lands not described by the appurtenant water right. Additionally, please be advised that any unauthorized diversion of water may cause the Department to commence a formal enforcement action and seek substantial civil penalties (\$300/ acre/season). Your Lemhi River water rights that are currently deliverable appear to include an 1871 right (74-742) and an 1873 right (74-739). These rights cover 56.8 acres and allow diversion of 1.71 cfs (85.5 inches). Use of your Agency Creek water rights are subject to control by the Agency Creek Watermaster.

Please contact me if you have questions or concerns regarding this matter. The Department encourages you to work closely with your watermaster(s) to ensure appropriate delivery of your water.

Respectfully,



Robert B. Whitney
Water Compliance Bureau

cc: James Cefalo - IDWR Eastern Region, Rick Sager - Lemhi River Watermaster