



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 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

September 28, 2010

Arden Cranney
250 Land Ranch Rd
Oakley, ID 83346

CERTIFIED MAIL

RE: Notice of Violation and Cease and Desist Order;

Dear Mr. Cranney:

The Idaho Department of Water Resources (Department) has determined that you are in violation of Idaho Code §42-351 during 2009 and 2010. The violation is associated with the irrigation of approximately 65 acres of land located within the SE1/4 of Section 4, Township 13 South (T13S), and Range 21 East (R21E) (see attached map).

The Department found evidence of the approximate 65 irrigated acres from a routine review of aerial imagery and water rights in 2010. Review of 2009 aerial imagery and current water rights records on file at the Department shows the land in question being irrigated with no appurtenant water rights. The Department asked the Water District No. 140 watermaster this year to inspect the land and send notice to you concerning the potential unauthorized use of water without a water right. The watermaster sent notice to you on September 8, 2010 confirming that the land is currently being irrigated without any valid appurtenant water rights. The Department understands that the source of water for the acreage in question is from Big Cottonwood Creek using the authorized diversion point under your adjacent water rights, 45-424, 45-442, and 45-13772. The Department also recognizes that there may be some changes in the place of use under these rights that have occurred in recent years that has resulted in some acres being irrigated without a right and other acres with water rights that are no longer irrigated. The adjacent water rights authorize irrigation of a total 209 acres. The Department finds that your total irrigated area may be as much as 220 acres, which would represent a net irrigation enlargement of 11 acres.

The irrigation of approximately 65 acres without valid water rights constitutes a violation of Idaho Code §42-351, illegal diversion of water without a water right. Under Idaho Code §42-1701B, the director of the Department may commence an administrative enforcement action to obtain a remedy for a violation and seek a civil penalty for irrigation use equal to three hundred dollars (\$300) for each acre irrigated, in whole or in part, for water illegally used or diverted.

This letter provides formal notice of a violation of Idaho Code §42-351. Pursuant to Idaho Code §42-1701B, the Department requires the following actions be taken:

1. Immediately cease and desist from the further diversion of ground water on the approximate 65 acres within the SE1/4 of Section 4, T13S, R21E.
2. Pay an agreed civil penalty in the amount of nineteen thousand five hundred dollars (\$19,500), which is the maximum penalty authorized by law for an illegal diversion of water

SCANNED
SEP 28 2010

of this magnitude. The civil penalty shall be due and payable to the Department no later than November 1, 2010.

3. You shall have the opportunity to enter into a Consent Agreement with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

If you object to any provision in this notice, you have the opportunity to schedule a compliance conference to discuss the violation with the Department. You must contact this office within fourteen (14) days of receipt of this notice to request a compliance conference. Failure to comply with the requirements of this notice will be cause for the Department to initiate civil enforcement action through the Attorney General in district court.

If you wish to request a compliance conference, please call me directly or submit a written request to me at the office listed on this letterhead. I look forward to your prompt reply and a final resolution of this matter.

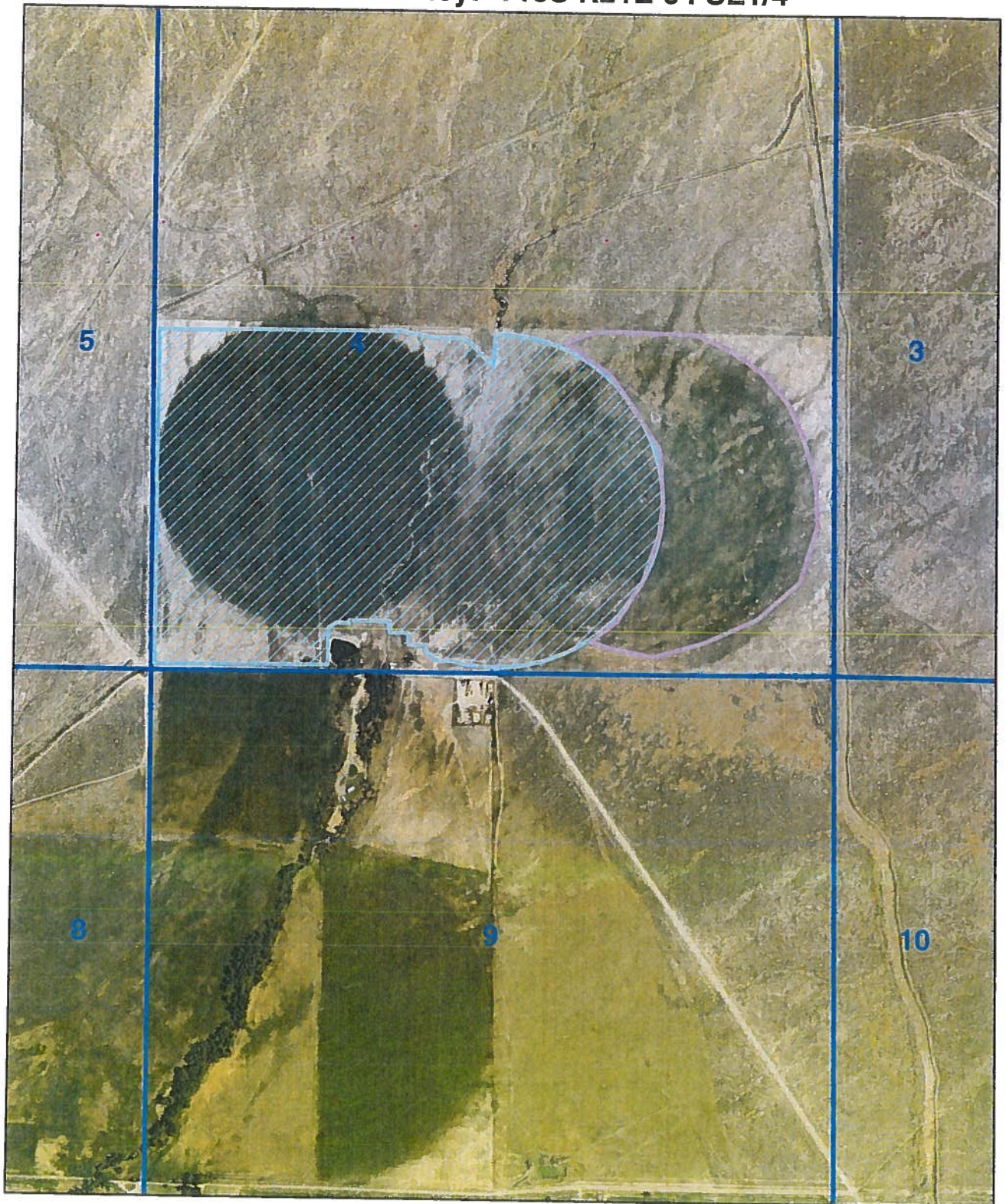
Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke". The signature is fluid and cursive, with the first name "Tim" and last name "Luke" clearly distinguishable.

Tim Luke
Manager, Water Distribution Section

cc: Brian Higgs, Water District 140 Watermaster
Rod King, Water District 45-K Watermaster
Allen Merritt, IDWR Southern Region Manager
John Homan, Idaho Deputy Attorney General

Unauthorized Place of U.
Arden Cranney: T13S R21E 04 SE1/4



Legend

-  Cranney Water Rt POU (45-424, 45-442, 45-13772)
-  Sections
-  Unauthorized Use area(s)

0 0.1 0.2 Miles

Imagery: 2009 NAIP
Prepared by: T. Luke, IDV
8/28/2010