



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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C. L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Interim Director

May 28, 2010

James P. Speck, Attorney  
Flying Joseph Ranch LLC  
PO Box 987  
Ketchum, ID 83440

Re: Flying Joseph Ranch LLC/Consent Order and Agreement for Notice of Violation Dated  
August 24, 2009

Dear Jim,

I am in receipt of the Consent Order and Agreement that you executed May 21, 2010 on behalf of Flying Joseph Ranch LLC (FJR) regarding the Notice of Violation and Cease and Desist Order dated August 24, 2010. Please find attached a copy of the agreement that I have executed on behalf of the Idaho Department of Water Resources. My correspondence to you dated May 20, 2010 included a receipt for the \$400 civil penalty that FJR had already paid for the violation. The Department appreciates your cooperation in this matter.

Please contact me directly at 208-287-4959 if you have any further concerns or questions regarding this matter.

Respectfully,

Tim Luke  
Water Distribution Section

Enclosure: Signed Copy of Consent Order and Agreement

Cc: Ted O'Neal, Watermaster, Water District No. 73  
Bob Foster, IDWR Salmon Field Office  
IDWR Eastern Region

**BEFORE THE DEPARTMENT OF WATER RESOURCES**  
**OF THE STATE OF IDAHO**  
**CONSENT ORDER AND AGREEMENT**

In the matter of Notice of Violation and Cease and Desist Order dated August 24, 2009, issued to Flying Joseph Ranch, LLC, pursuant to Section 42-1701B, Idaho Code.

**Findings of Fact**

- 1) Flying Joseph Ranch, LLC ("FJR or Respondent") is the owner of property located in the E1/2SE1/4 of Section 19, Township 13 North (T13N), Range 23 East (R21E), Custer County, Idaho, which is part of a large ranch (the "Ranch"). The Idaho Department of Water Resources ("Department") issued a Notice of Violation and Cease and Desist Order to FJR on August 24, 2009, for diverting and storing surface water from the Pahsimeroi River to a pond within the above referenced location (the "Pond") during 2009 without a water right. The water was diverted to the Pond on at least several occasions in 2009 using an existing diversion and a conveyance ditch from the Pahsimeroi River authorized for use by other water rights owned by FJR for irrigation of the Ranch.
- 2) FJR is the holder of water right permit no. 73-12146 that authorizes the storage of ground water for aesthetic, recreational and wildlife purposes in the Pond within the location described in Finding 1 above. The pond is an excavated area designed to capture shallow ground water. The permit does not authorize the drilling of a well or diversion of ground water from any existing well for storage in the Pond, nor does it authorize diversion and storage of water from any other water source.
- 3) On May 21, 2009, the Department sent a notice to FJR regarding FJR's diversion of surface water to the Pond. The diversion of surface water to the pond was observed and reported by the Water District No. 73 watermaster. The notice requested that FJR stop further diversion of surface water to the Pond until it obtains valid surface water rights for such diversion and storage use. The notice also required FJR to contact the Department regarding the status of the alleged water diversion and use. The notice further advised FJR of a potential enforcement action by the Department for any diversion of water to the pond without a valid water right.
- 4) Upon receipt of the Department's notice dated May 21, 2009, FJR's legal representative contacted the Department and acknowledged FJR's diversion of surface water to the Pond using water diverted under other valid water rights owned by FJR. FJR's representative advised the Department that the naturally occurring ground water table had not provided an adequate volume of water to fill the Pond and that FJR would file a water right transfer application proposing to change the nature of use under one of its surface water rights from irrigation to aesthetic, recreational and wildlife storage use in the Pond. Department records indicate that FJR filed water right transfer application no. 75708 on June 5, 2009.

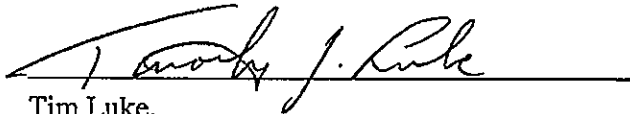
- 5) On July 16, 2009, the watermaster of Water District No. 73 reported to the Department that FJR was again diverting surface water to the Pond.
- 6) The Notice of Violation and Cease and Desist Order (NOV) issued by the Department on August 24, 2009 again required that FJR cease further diversion and storage of surface water to the Pond and pay an agreed civil penalty. The NOV provided FJR an opportunity to request a compliance conference with the Department.
- 7) On August 12, 2009, FJR's legal representative met with Department agents and attorneys at the Initial Hearings for all of the contested water right recommendations for the Ranch. FJR contended in objections filed against those recommendations that substantially more historically irrigated land should be included in the place of use than the 1857.6 acres described in the initial recommendations for its Pahsimeroi River water rights filed by the Department in the Snake River Basin Adjudication ("SRBA"). The Department agent indicated his agreement with most of the claimed additional irrigated lands.
- 8) On August 28, 2009, FJR's legal representative contacted the Department to provide an update of FJR's water right transfer, surface water rights, diversions, and conveyances, including the diversion and storage of surface water to the Pond. FJR explained that it had attempted to file a water right transfer application in 2008 that was similar to the one filed in 2009 but the Department had returned the application and advised FJR that it was only necessary to file a new water permit application which was subsequently approved as water permit no. 73-12146. FJR also explained that it is currently irrigating significantly less than the 1857.6 acres described above. Review of annual satellite imagery on record at the Department for the past several years, including 2009, indicates that FJR is presently irrigating less than the total 1857.6 acres.
- 9) From September, 2009 through February, 2010, FJR's legal representative and the assigned Department agent worked on the description of the place of use and points of diversion for the surface water rights used to irrigate the Ranch and claimed in the SRBA. At the end of February, 2010, FJR's legal representative and the Department agent discussed proposed terms of an agreement whereby the place of use includes 2,409 irrigated acres and the points of diversion and re-diversion include the head gates and ditches that deliver water from the Pahsimeroi River to and through the Pond. FJR's legal representative continues to work on the SF-5's for these water rights with the new Department agent assigned to these sub-cases as the former agent retired at the end of February, 2010.

In order to remedy the Notice of Violation issued by the Department on August 24, 2009, FJR and the Department agree as follows:

**Terms of Agreement**

- 1) FJR agrees to cease and desist further diversion of surface water to and storage of surface water in the Pond for aesthetic, recreational or wildlife purposes until a valid water right is obtained for these uses pursuant to the water right transfer application filed with the Department on June 5, 2009.
- 2) FJR agrees to pay a civil penalty in the amount of four hundred dollars (\$400), payable to the Idaho Department of Water Resources within twenty-one days of the execution of this agreement for the violation identified in the Notice of Violation dated August 24, 2009. The civil penalty compensates the Department for its time and resources associated with the investigation and resolution of this matter.
- 3) This agreement does not limit the Department from seeking future compliance or regulation of said water use for other issues not directly related to the unauthorized uses that occurred this year.

Signed this 28<sup>th</sup> day of MAY, 2010.

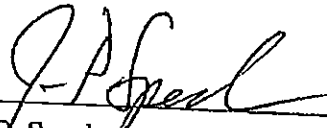


Tim Luke,  
Manager, Water Distribution Section  
Idaho Department of Water Resources

## CONSENT

Respondent acknowledges, in general, the facts set forth herein, and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Signed this 21 day of May, 2010.

  
James F. Speck, Attorney-In-Fact,  
Flying Joseph Ranch LLC

## Idaho Department of Water Resources Receipt

Receipt ID: C090396

Payment Amount \$400.00 Date Received 4/1/2010 10:30 AM Region STATE

Payment Type Check Check Number 37423

Payer SPECK & AANESTAD

Comments FLYING JOSEPH RANCH, LLC

### Fee Details

| Amount   | Description             | PCA   | Fund | Fund Detail | Subsidiary | Object |
|----------|-------------------------|-------|------|-------------|------------|--------|
| \$400.00 | WATER RIGHT ENFORCEMENT | 55506 | 0229 | 22          |            | 1315   |

Signature Line (Department Representative)