



State of Idaho

DEPARTMENT OF WATER RESOURCES

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April 18, 2006

ATTN DAVID TURNBULL &/OR JAY WALKER
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BOISE ID 83713

RECEIVED
APR 19 2006
DEPARTMENT OF
WATER RESOURCES
CERTIFIED MAIL

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

**Re: Order to Cease and Desist Illegal Diversion of Water to Ponds,
Violation of I. C. § 42-351**

Dear Sir(s):

The Idaho Department of Water Resources (IDWR) recently investigated complaints regarding diversion of water to fill two ponds for the Paramount Subdivision. The complaints discussed the use of a new irrigation well and of surface water delivered by Settlers Irrigation District. This involves land in Section 25, T4N R1W, Ada County.

The new well is associated with water right no. 63-32097. The right authorizes use of the well for supplemental irrigation from March 15 through November 15 (see conditions of approval in enclosed copy). IDWR has learned that development of the well included diversion of water to the ponds. This could be interpreted as a routine practice to fully develop the well prior to beneficial use of the water, although it appears this action continued longer than necessary. This implies the well was used beyond routine actions with the intent of at least partly filling the ponds for irrigation and perhaps for other uses (water amenity?). Water right 63-32097 does not authorize diversion of water to the ponds for any beneficial use.

The surface water is provided under multiple water rights held by the irrigation district. That water is typically used for irrigation during the period when the Boise River watermaster delivers water into the canal system (usually sometime in April through sometime in October). Use of canal water is not authorized for pond storage in this situation. Paramount should use canal water by methods other than those associated with pond storage and irrigation from pond storage. In this manner, canal water should freely flow past Paramount property to provide irrigation water for other users.

Apparently Paramount LLC intends to use ground and/or surface water to fill and maintain the ponds for irrigation and perhaps other uses. Please be advised that at this

time neither ground water nor surface water can be stored in the ponds and cannot be diverted from the ponds for irrigation or for any other use such as a water amenity. Diversion of water to the ponds, storing water in the ponds, and/or diverting water from the ponds would constitute illegal diversion of public water pursuant to I. C. § 42-351.

Under I. C. § 42-1701B, the director of IDWR may commence an administrative enforcement action against an illegal diversion of water. An enforcement action can include civil penalties and civil proceedings through the Idaho Attorney General in district court. IDWR is not commencing such an action against your company at this time. However, the concern about diverting water to the ponds clearly remains on the table.

Therefore, IDWR requires that the following action be taken immediately:

- 1. CEASE and DESIST any further diversion of water to the ponds, storage of water in the ponds, and/or diversion of water from the ponds for any reason.**
- 2. None of the preceding activities shall occur until IDWR issues water right approval for the activity.**
- 3. Paramount shall file an application(s) for the appropriate type of water right approval with IDWR. The application(s) shall address the issues of initial fill for the capacity of the ponds, refills of the ponds, irrigation from the ponds, and any other beneficial uses associated with the ponds.**
- 4. Any illegal diversion of water to the ponds, storage of water in the ponds, and/or diversion of water from the ponds can be subject to an administrative enforcement action under I. C. § 42-1701B.**
- 5. This cease and desist shall remain in effect until IDWR issues water right approval for the action in question.**

Due to obligations to complete the Snake River Basin Adjudication, IDWR most likely would not be able to process Paramount's application(s) for timely resolution during the next few months. This includes short term (water bank) as well as long term (transfers etc.) water right solutions. This leaves you in a bind for the 2006 irrigation season.

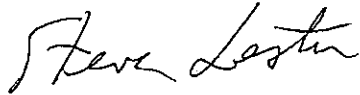
Because of these constraints and the obvious need for Paramount to proceed with some type of irrigation plan, IDWR recommends a meeting to discuss alternatives available for

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this difficult situation.

Please contact me at 334-2190 to arrange a meeting at your earliest convenience. Thank you for your prompt attention to this urgent matter.

Sincerely,

A handwritten signature in cursive script that reads "Steve Lester".

Steve Lester
Water Rights Supervisor

Enclosure

Copy (w/o enclosure): Settlers Irrigation District C/O Scott Campbell, Attorney at Law
Steven Hannula, ERO Resources Corp.