



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 8, 2004

Richard Kechter
218 W 13th
Burley, ID 83318

CERTIFIED MAIL

Re: Consent Order and Agreement; Notice of Violation Dated March 10, 2004

Dear Mr. Kechter,

I found several editorial errors in the Consent Order and Agreement that I sent to you via cover letter dated June 7, 2004. Please disregard the prior Consent Order that I sent to you and review the enclosed, revised Consent Order, dated June 8, 2004.

I apologize for the errors and any confusion this may have caused.

Respectfully,

Tim Luke
Water Distribution Section

Enclosure

Cc: Cindy Yenter, Watermaster, Water District 130
Cynthia Clark, IDWR Water Supply Bank Program
William Parsons
Charles Brockway
John Homan, Idaho Attorney General's Office

**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 March 10, 2004, issued to Richard Kechter, pursuant to Section 42-1701B, Idaho Code.

Findings of Fact

- 1) Richard Kechter (Kechter) is the owner of property situated in Sections 9, 10, 11, 15, and 16, Township 8 South, Range 21 East, Jerome County. The Idaho Department of Water Resources (Department) issued a Notice of Violation to Kechter on March 10, 2004 for irrigating approximately 261 acres within the above-described tracts of land without a valid water right.
- 2) William Parsons, attorney for Kechter, requested a compliance conference with Department representatives pursuant to the March 10, 2004 Notice of Violation. During the compliance conference held on April 27, 2004, between the Department, and Kechter's representatives, including William Parsons and Charles Brockway Sr., there was admission by Kechter's representatives that approximately 200 acres may have been irrigated in 2003 without valid water rights. There was some disagreement regarding the exact number of illegally irrigated acres due to questions about rock outcroppings and whether those acres should be counted as irrigated and/or if credit should be given for rock outcroppings under valid water rights owned by Kechter.
- 3) The Department and Water District No. 130 watermaster, Cindy Yenter, worked with representatives of Kechter immediately after the April 27, 2004 compliance conference to more precisely determine the number of acres irrigated in 2003 without valid water rights. This additional and more detailed analysis of Kechter's 2003 irrigated acres and water rights resulted in a net illegal irrigation of 278 acres within the sections described above. Kechter irrigated these 278 acres illegally during the 2003 irrigation season. However, for purposes of determining any monetary penalties, Kechter is given a 51 acre credit during 2003 due to a water right transfer (Transfer No. 69603) that was filed prior to 2003 and then withdrawn at the end of the 2003 irrigation season and replaced by two other, more comprehensive water right transfers. The net illegal irrigated acres in 2003, for purposes of determining monetary penalties, are 227.
- 4) Kechter filed two water right transfer applications with the Department on December 8, 2003 so that the lands illegally irrigated in 2003 may be covered by valid water rights.

The Department held a compliance conference with Kechter on April 27, 2004. It is hereby ordered and agreed that:

Terms of Agreement

- 1) Kechter agrees to cease and desist from further diversion of ground water for irrigation of the 278 acres located in portions of Sections 9, 10, 11, 15 and 16, Township 8 South, Range 21 East, until valid water rights are obtained for this land and upon receiving authorization from the Department. Pending applications for transfers that have not been formally approved by the Department do not constitute approval of valid water rights for irrigation of this land. Kechter agreed to renting water from the water supply bank during 2004 for irrigation of these lands since the pending water right transfers applications cannot be approved prior to or during much of the 2004 irrigation season.
- 2) Restitution for unauthorized withdrawals for water illegally diverted and applied to the 278 acres shall be accomplished by rental of 613 acre-feet of water from the water supply bank during 2004, which is the estimated amount of water diverted illegally in 2003 for the irrigation of the 278 acres. The land under any water right or water rights leased from the water supply bank for the necessary 613 acre-feet must be idled during the 2004 irrigation season.
- 3) Payment of an agreed civil penalty in the amount of \$1,000 is payable to the Idaho Department of Water Resources within thirty days (30) days of the execution of this agreement for the violation identified in the Notice of Violation dated March 10, 2004.
- 4) The Department suspends payment of \$67,100 of the civil penalty proposed by the Notice of Violation dated March 4, 2004. This penalty or any portion may be re-imposed for Kechter's failure to fully comply with this agreement, including continuing unauthorized irrigation of portions of Sections 9, 10, 11, 15 and 16, Township 8 South, Range 21 East, and the restitution required under item 2 of this agreement.
- 5) This agreement does not limit the Department or the Watermaster of Water District No. 130 to seek future compliance or regulation of said water use for other issues not directly related to the unauthorized uses that occurred this year.

Dated this _____ day of _____, 2004.

$278 \times 3.5 = 973$
613
~~RENT = 1586 af~~
~~IN 2004~~
 $\$17,446$

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

CONSENT

Respondent Kechter acknowledges, in general, the facts set forth during the conference 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 _____ day of _____, 2004.

Richard Kechter