



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 10, 2004

Richard L Kechter
218 W 13th
Burley ID 83318

CERTIFIED MAIL

Re: Notice of Violation of Idaho Code Section 42-351
Order to Cease and Desist Illegal Diversion

Dear Mr. Kechter:

The Idaho Department of Water Resources (IDWR) has determined that you, Richard Kechter, are in violation of Idaho Code §42-351. The violation is associated with unauthorized diversion of ground water for irrigation of approximately 261 acres located within Sections 8, 9, 10, 11, 15 and 16, Township 8 South, Range 21 East. On October 2, 2003, you were hand delivered a letter from the Watermaster of Water District No. 130 instructing you to Cease and Desist the unauthorized use of water on these lands and advising you that IDWR may issue a Notice of Violation. The above-described action constitutes a violation of I.C. §42-351, illegal diversion of water without a water right. You are hereby ordered to **CEASE and DESIST** any further diversion of water for irrigation of the lands described above.

Under Idaho Code, Section 42-1701B, the director of IDWR 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) annually for each acre irrigated, in whole or in part, for water illegally used or diverted.

Pursuant to Idaho Code, Section 42-1701B(5)b, IDWR requires that the following action be taken:

1. You must **CEASE and DESIST** any further diversion of water on lands located within Sections 8, 9, 10, 11, 15 and 16, Township 8 South, Range 21 East that are not authorized by a valid water right. Diversion of water shall not be resumed until authorization is received from the Department.
2. Make restitution by acquiring mitigation water or otherwise in accordance with law to replace the amount of water illegally diverted from the Eastern Snake Plain Aquifer in 2003. Mitigation water shall be made available during 2004. You shall bear the initial burden of proof for determining the

amount of water illegally diverted in 2003 that will be the basis, upon approval by IDWR, for the amount of water required for mitigation in 2004. You shall submit a mitigation plan to IDWR no later than April 1, 2004.

3. Pay an agreed civil penalty in the amount of seventy-eight thousand three hundred dollars (\$78,300), which is the maximum penalty authorized by law for an illegal diversion of water of this magnitude. The civil penalty shall be due and payable to IDWR no later than April 15, 2004. Because you are required to make restitution, the civil penalty sought can be reduced upon negotiation with IDWR pursuant to a compliance conference.

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

Please note that there may be options available to you with respect to obtaining a valid water right for the unauthorized use described above. These options can be further explored with IDWR at a compliance conference. If you have questions concerning this matter please contact me directly at (208) 327-7864. You may also contact Cindy Yenter, Water District No. 130 watermaster at 208-736-3033.

Respectfully,



Tim Luke

Manager, Water Distribution Section

cc: Cindy Yenter, Water District 130 Watermaster
Glen Saxton, IDWR Administrator
Allen Merritt, IDWR Southern Regional Manager
Orlo Maughan, Chairman, Magic Valley Ground Water District
John Homan, Idaho Deputy Attorney General