



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

September 3, 2008

Bill Maxwell
PO Box 256
Carmen, ID 83462

RE: Consent Order and Agreement; Notice of Violation Dated July 29, 2008

Dear Mr. Maxwell:

Please find enclosed a Consent Order and Agreement (Agreement) regarding the Notice of Violation dated July 29, 2008 that the Idaho Department of Water Resources (Department) sent to you. This Agreement is being sent to you following the compliance conference that was held in Salmon on August 26, 2008 between you and Department representatives. I believe the facts, terms, and conditions of the attached agreement are consistent with what we discussed at the August 26th conference.

Please carefully review and consider the terms and conditions of this proposed Agreement. If you agree with the terms and conditions, please sign the document and return it directly to me as soon as possible. I will then execute the agreement on behalf of the Department and return a copy of the original with signatures to you. The agreed upon civil penalty is due to the Department within twenty-one (21) days of the execution of the agreement.

If you have any further concerns or questions about the proposed Agreement, please call me directly or submit written comments to me at the office listed on this letterhead. I look forward to your prompt reply and a final resolution of this matter. Thank you once again for your prompt cooperation in this matter.

Respectfully,

Tim Luke
Manager, Water Distribution Section

Cc Bob Foster, IDWR Salmon Field Office
Ernie Carlsen, IDWR Eastern Region ←
John Homan, Idaho Deputy Attorney General

RECEIVED

SEP 10 2008

Department of Water Resources
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 July 29, 2008, issued to Bill Maxwell pursuant to Section 42-1701B, Idaho Code.

Findings of Fact

- 1) Bill Maxwell (Maxwell) is the owner of record of land located in the SW 1/4 of Section 6, Township 22 North (T22N), Range 22 East (R22E).
- 2) On July 1, 2008, the IDWR's Salmon Regional Office sent a notice to Maxwell advising that an interested party had alerted the Idaho Department of Water Resources (Department) about a potential water development within the property described in Finding 1 above. The notice advised Maxwell that a search of water rights on record at the Department found only two unapproved water right applications in the name of Gertude Maxwell for irrigation use appurtenant to the above mentioned land. Maxwell's water right applications are 75-14461 and 75-14462. The notice reminded Maxwell that both water right applications had been protested and no authorization had been given by the Department for any irrigation of land in the SW1/4 of Section 6, T22N, R22E. The notice further advised Maxwell to perform the following with regards to any irrigation of the land in question: (1) review the notice sent and contact the Department's representative in Salmon, (2) identify valid or approved water rights that should cover the parcel if our records are not correct, (3) cease any further diversion of water to the identified parcel if there is no valid water right, and/or (4) obtain a valid water right for the irrigation development. Maxwell was further advised to respond within 14 days of the date of the notice and that enforcement action could be taken.
- 3) On July 7, 2008, Maxwell contacted the Department's Salmon field office representative to discuss the notice. Maxwell agreed to cease irrigation of the land in question. Maxwell explained at the time that he thought the water right applications had been approved because the Department's web site showed an "active" status for the rights.
- 4) On July 9, 2008, the Department received a detailed letter of complaint from Arden and Illene Arrington, and Lawrence and Shirley Shiley, regarding Maxwell's unauthorized irrigation use of land within the SW1/4 of Section 6, T22N, R22E. Photos were included that showed a relatively small diameter irrigation pipeline with several irrigation sprinkler nozzles being used to deliver water from some existing irrigation system to the Maxwell land in question.
- 5) On July 29, 2008, the Department sent Maxwell via certified mail a Notice of Violation and Cease and Desist Order (NOV) notifying Maxwell that he had irrigated

in 2008 up to 5 acres of land located within the SW1/4 of Section 6, T22N, R22E. The NOV advised Maxwell that a search of water rights on record at the Department found no water rights appurtenant to the 5 acres in question other than the unapproved and protested water right applications, and that the 5 acre irrigation development appeared to be an unauthorized irrigation use. The Department required Maxwell to cease and desist further irrigation of the 5 acres until valid water rights were obtained for the land, disconnect the gravity sprinkler system to this property, and pay a civil penalty of fifteen hundred dollars (\$1500).

- 6) Shortly after the receipt of the NOV, Maxwell contacted the Salmon office representative to establish a compliance conference sometime after August 25, 2008. A date was later set for August 26, 2008 to execute the compliance conference.
- 7) A compliance conference was held on August 26, 2008 between Department representatives and Maxwell to discuss the NOV dated July 29, 2008. At the conference Maxwell reiterated his previous explanation that he thought the water right applications had been approved because of the "active" status designation listed for the rights on the Department's web page. Maxwell also explained that he had only diverted water for about three days to three irrigation nozzles, and had not irrigated more than about a quarter of an acre of land.
- 8) In response to Maxwell's explanations at the Department's August 26, 2008 compliance conference, the Department representatives explained that the "active" status that Maxwell saw on his applications is given to all applications for permit filed with the Department upon appropriate information and filing fees, but that Maxwell's applications were still protested and not yet approved or permitted. The Department representatives explained, and Maxwell acknowledged, that Maxwell had not yet received any formal correspondence from the Department concerning any official approval of the application and/or any correspondence concerning any scheduled hearings or other resolution of the protests. Maxwell acknowledged that he had not contacted any Department representatives to confirm his interpretation of the "active" status and/or to confirm whether the application had been officially permitted by the Department. Maxwell further acknowledged that the Department's Salmon office representative had advised Maxwell in 2007 that the land in question could not be irrigated until the applications were permitted by the Department.
- 9) Immediately after the compliance conference on August 26, 2008, the Department's Salmon office field representative visited the Maxwell property and irrigation system. The Department confirmed the existence of an approximate 300-foot long mainline, 1-1/2 inches in diameter, connected to an approximate 100-foot long one inch mainline with 3 irrigation sprinkler nozzles. The system was disconnected at the first sprinkler head or riser, and was shut off by a valve at the point where the one inch line was connected to the 1-1/2 inch line. The 1-1/2 inch line was connected to an existing authorized irrigation diversion system from Wallace Creek used by various water users, including the Arrington's, Shiley's and Gertude Maxwell. The Department representative estimated that less than one-half acre could be irrigated at a time using this irrigation system. The Department representative also confirmed

that the 1-1/2 inch pipeline was disconnected from the existing Wallace Creek irrigation diversion system.

It is hereby ordered and agreed that:

Terms of Agreement

- 1) Maxwell agrees not to further irrigate any of the land in SW 1/4 of Section 6, T22N, R22E in 2008 or subsequent years until valid water rights are secured pursuant to an approved water right obtained from the Department.
- 2) Payment of an agreed civil penalty in the amount of seven hundred and fifty dollars (\$750) is payable to the Idaho Department of Water Resources within twenty-one (21) days of the execution of this agreement for the violation identified in the NOV dated July 29, 2008. The penalty is based on the maximum amount allowed by law for the unauthorized irrigation of up to one acre, plus costs to cover estimated time Department staff spent in bringing this matter to compliance.
- 3) The Department suspends payment of seven hundred fifty dollars (\$750) civil penalty, which is the maximum penalty authorized by law for an illegal diversion of 5.0 acres less the amount identified in term 2 above. This penalty or any portion may be re-imposed for Maxwell's failure to fully comply with the terms of this agreement.
- 4) Maxwell agrees to permanently disconnect the 1-1/2 inch pipeline from the existing water delivery system used by the Arrington's and Shirley's until such time as Maxwell obtains valid water rights for the irrigation use in the SW1/4 of Section 6, T22N R22E, and upon consent from the users or owners of the existing irrigation system.
- 5) This agreement does not limit the Department to seek future compliance or regulation of said water use for other issues not directly related to the unauthorized use in 2008.

Dated this _____ day of _____, 2008

Tim Luke
Manager, Water Distribution Section, IDWR

CONSENT

Respondent 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 _____, 2008

Bill Maxwell