



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

September 23, 2004

Jordan P Smith
807 Main St.
Salmon, ID 83467

Re: Notice of Violation, Berend Friehe; Your Correspondence dated August 30, 2004

Dear Mr. Jordan,

I have received and reviewed your letter dated August 30, 2004 concerning the status of the Department's Notice of Violation to Mr. Friehe. Pursuant to the telephone conference on August 23, 2004 involving you, Mr. Friehe, Bob Foster and myself, it was agreed that Bob Foster would re-visit the pivot with Mr. Friehe's and locate the irrigated acres under the pivot using a GPS receiver. Mr. Foster completed this task and as Mr. Friehe indicated, it appears that only about three-quarters of the land under the pivot is irrigated. The Department's Notice of Violation dated August 18, 2004 involved the potential expansion or unauthorized irrigation of about 25 acres in the SENW of Section 33, T13N, R23E. Based on review of Mr. Foster's fieldwork and GPS data collection, it appears that the pivot covers only about 5 acres in the SENW of Section 33, and about 1 to 2 acres in the SWNW of Section 33. Mr. Friehe's Snake River Basin Adjudication claims do not cover any irrigated acres in the S1/2 of the NW1/4 of Section 33. However, based on review of the claims and decreed rights, and the GPS pivot location data collected by Mr. Foster, it also appears that Mr. Friehe is not irrigating more land than authorized by his water rights in the N1/2 of Section 33 and the S1/2 of Section 28, T13N, R23E.

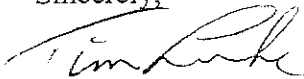
With respect to the point of diversion issue, I believe we determined that the location of the current point of diversion for the pivot does not match the point of diversion locations in Mr. Friehe's SRBA claims. It is my understanding that the old point of diversion for this land in question was located on the same stream channel upstream from the current diversion point. However, the alleged former point of diversion location also did not seem to match the SRBA claimed points of diversion. I had understood that Mr. Foster could not determine from his field visit the location of the former point of diversion. The stream channel on which the current point of diversion is located appears to be an unnamed spring-fed creek tributary to the Pahsimeroi River. The channel is not the same channel as Spring Creek, which our notice of violation had alleged.

Although there are some location discrepancies between the SRBA claimed and actual irrigated place of use and points of diversions, I believe these are relatively minor and do not warrant further scrutiny relative to the Notice of Violation. The Department therefore will not pursue the Notice of Violation further. Since the point of diversion was changed recently, I believe Mr. Friehe should file a water right transfer to correct the point of diversion location and update the

place of use on his claims and water rights. Since the Department is currently involved with review and recommendation of SRBA claims in the Pahsimeroi basin, I suggest that you contact staff in our adjudication bureau for additional direction regarding this matter. You may contact either Ernie Carlsen at our Idaho Falls regional office or Roxanne Brown at our State Office. Both Ernie and Roxanne are involved in review and recommendation of SRBA claims in the Pahsimeroi.

You may also contact me directly at 327-7864 if you have further questions of me regarding this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Luke".

Tim Luke

Cc: Berend Friehe

✓ Bob Foster, IDWR Salmon Field Office

Roxanne Brown, Adjudication Bureau, IDWR