



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 W Center Street, Soda Springs, Idaho 83276-1575

Phone: (208) 547-3993 FAX: (208) 547-3939 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

May 29, 2007

BRETT OXBORROW
NAUNON, ID 83

CERTIFIED MAIL

**RE: Pending Notice of Violation
Potential Unauthorized Use of Water**

Dear Mr. Oxborrow,

The Idaho Department of Water Resources (Department) has become aware of a couple water developments or uses for which there are no water rights and/or exceeds the amount of water and use allowed under any existing valid water rights. The developments in question are:

One of the developments in question is your diversion on Stauffer Creek located in the NWNWSE of Section 32, T 11S, R 43E, and irrigating about 6 acres in the NWSW of Section 32, T 11S, R 43E all within the B.M., in Bear Lake, County. Water right 11-308 has two points of diversion, one is section 33 and one in section 34 all within T 11S, R 43E. This right should irrigate 25 acres in the E1/2NE of section 33 or W1/2NW of section 34. This expansion appears to have occurred this spring. There is no evidence in the Department records that these 6 acres in question were ever irrigated under your water rights, nor is there evidence that these 6 acres are including in any other water rights.

The second development in question is your diversion from Fern Creek located in lot 3 of the NENW of Section 6, T 12S, R 43E, and irrigating ground in lot 4 of the NWNW and lot 3 of the NENW of Section 5, T 12S, R 43E all within the B.M., in Bear Lake, County. There is no evidence in the Department records that any diversions are allowed on this source and that the irrigated acres in questions were ever irrigated under a water right.

On May 17, 2007, representatives of the Department visited the sites for both diversions. Since there do not appear to be water rights authorizing the diversion or irrigation of the ground described above, I request your immediate cooperation in:

- a) Identifying what water right covers these diversions and sources that you have developed if our records are not correct.

- b) Cease the diversion of water for irrigation from both diversions, if you do not have a right to do so, and/or
- c) Obtain a valid water right for the development in question.

Please respond to our office within 10 days of the date of this letter as to the status of your project. Please note that to divert water in Idaho without a valid water right is illegal pursuant to §42-351, Idaho Code, and that pursuant to §42-1701B, Idaho Code, civil penalties for illegal irrigation use may be \$300 annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

If you have questions regarding this matter please contact me directly at 547-3993. You may also contact Tom Bassista, IDWR, Stream Channel Alteration at 525-7161, or Ernie Carlsen, Idaho Falls Office (525-7161). I'm frequently away from the office doing fieldwork this time of year so please call for an appointment or contact our eastern regional office.

Sincerely,

Cindy Bird
Soda Springs Satellite Office

Attachments: Summary of Water Right
Water Rights Place of Use Maps (2)

CC: Rock Holbrook, Water District 11 Watermaster
Tim Luke, Water District Section
Ernie Carlsen, IDWR Eastern Region
Tom Bassista, Stream Channel Alteration