

Cynthia



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

June 18, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Mark Henery
c/o John Schorzman
1400 South 3300 East
Malta, ID 83342

CERTIFIED MAIL

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

Dear Mr Schorzman:

The Idaho Department of Water Resources ("IDWR") has determined that you are in violation of Idaho Code §42-351. The violation is associated with unauthorized diversion of ground water for irrigation of approximately 112 acres located within the SE 1/4 of Section 36, Township 12 South (T12S), Range 27 East (R27E). On June 6, 2005, IDWR sent you a Pending Notice of Violation regarding the potential unauthorized irrigation of lands within the above referenced legal description. The notice advised you of the potential unauthorized use and asked that you identify water rights for the expanded development or else cease and desist further diversion of water on the lands in question. The notice also advised you that IDWR might issue a Notice of Violation.

You contacted IDWR on June 15, 2005, and advised IDWR that the land in question has not been irrigated this season, but had been irrigated in 2004. You also stated you have plans to transfer water rights from lands in Section 27, Township 12 South (T12S), Range 28 East (R28E) to the lands in question but have not initiated this transfer. Note that an application for transfer is not sufficient for irrigation and that irrigation of the lands in question is illegal until a permanent transfer or another means of providing water has been approved by IDWR.

The 2004 irrigation of the 112 acres in Section 36, Township 12 South, Range 27 East, 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.

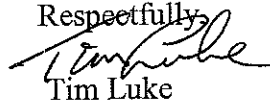
Pursuant to Idaho Code, Section 42-1701B(5)b, IDWR requires that the following action be taken:

1. You must **CEASE and DESIST** any further diversion of water on lands located within Section 36, T12S, R27E that are not authorized by a valid water right. Diversion of water shall not be resumed until authorization is received from the Department.
2. Pay an agreed civil penalty in the amount of thirty three thousand six hundred dollars (\$33,600), 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 July 30, 2005.

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.

Respectfully,



Tim Luke

Manager, Water Distribution Section

cc: Dave Tuthill, IDWR Administrator
Allen Merritt, IDWR Southern Regional Manager
Cynthia Clark, IDWR
John Homan, Idaho Deputy Attorney General