



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

JAMES E. RISCH
Governor

KARL J. DREHER
Director

July 14, 2006

Scott Carlisle
PO Box 1266
Afton, WY 83110

RECEIVED

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Department of Water Resources
Eastern Region

CERTIFIED MAIL

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

Dear Mr. Carlisle:

The Idaho Department of Water Resources (IDWR) has determined that you are in violation of Idaho Code Section 42-351. The violation is associated with two illegal diversions of water from Spring Creek, tributary to Webster Creek, for use in expanded fish propagation facilities located in the NENE and SENE of Section 32, T7S, R46E. The new or expanded facilities receive water from two separate pipeline diversions from Spring Creek, including a ten inch pipeline diversion and a four inch pipeline diversion both located within the SENW of Section 32, Township 7 South, Range 46 East. The points of diversion are located on land owned by the US Forest Service (USFS). Evidence available to IDWR from the USFS indicates the USFS issued special use permits for the ten and four inch pipelines in 1996. IDWR staff visited these diversions and the expanded fish propagation uses on June 20, 2006. IDWR confirmed at the time of the visit that the ten inch pipeline provides water to six fish rearing concrete ponds or tanks that are approximately 30 feet in diameter each, and that the four inch pipeline provides water to a fish hatchery facility consisting of 16 large incubation raceways and four small incubation raceways. Review of aerial photographs taken in 2004 confirms the existence of the six concrete fish rearing tanks and a separate building that includes the incubation raceways.

Additionally, there is a 1-1/2 inch pipeline diversion that diverts water from the head of Spring Creek (located next to the four inch pipeline that goes to the hatchery) used for commercial purposes pursuant to IDWR permit number 24-10673. The 1-1/2 inch pipe also provides water to a domestic use that is not included as a beneficial use under permit 24-10673. The domestic use from Spring Creek therefore is not a legal use of water. Moreover, IDWR has information indicating that there is no special use permit from the US Forest Service that authorized the use of the 1-1/2 inch pipeline diversion on or across Forest Service property. The lack of this authorization places permit 24-10673 at risk and may jeopardize the ability of IDWR to ultimately license the permit.

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 \$50 per one-tenth cubic foot per second of water diverted per calendar day, or \$50 per two-tenths of an acre-foot of water diverted to storage, up to \$50,000 per year for water illegally used or diverted, in whole or in part, for water illegally used or diverted.

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

1. **CEASE and DESIST** any further diversion of water from Spring Creek through the ten and four inch diameter pipelines for fish propagation uses unless authorized by valid water rights. Applications for a water right permit do not constitute valid water rights. Diversion of water from Spring Creek to the expanded hatchery facilities and using the ten and four inch pipelines shall not be resumed until authorization is received from the Department.
2. **Pay** an agreed civil penalty in the amount of **ten thousand dollars (\$ 10,000)**, 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 August 15, 2006.

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.

Respectfully,



Tim Luke
Manager, Water Distribution Section

cc: Cindy Bird, IDWR Soda Springs Field Office
IDWR Eastern Region
John Homan, Idaho Deputy Attorney General
Darren G Olson, US Forest Service, Soda Ranger District