



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

June 24, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Jack Post
South Elmore Irrigation Company
Mountain Home, Idaho, 83647

CERTIFIED MAIL

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

Dear Mr. Post:

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 water from the Snake River for irrigation of approximately 144 acres located within S1/2NW and N1/2SW of Section 6, Township 5 South (T5S), Range 7 East (R7E). On June 1, 2004, 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 3, 2004, and advised IDWR that the land in question was being irrigated as a result of a transfer of water from another water user within the South Elmore Irrigation Company ("SEIC"). Specifically, you said that water was moved under SEIC's water right 02-2269, from land owned by Terry Ketterling located in the NE1/4 of Section 3, Township 5 South, Range 6 East, to the 144 acres in Section 6, Township 5 South, Range 7 East. IDWR has confirmed that Ketterling's land in the NE1/4 of Section 3 is currently a dairy and not irrigated with water under right 02-2269. You also stated that you and SEIC had worked with IDWR on its service area boundary for its Snake River Basin Adjudication ("SRBA") claims and that SEIC had included your 144 acres in Section 6 within the SEIC service area. Although IDWR did spend some time with SEIC reviewing service area boundaries for the SRBA, IDWR has determined that SEIC is not eligible to establish a general place of use area within a service area boundary because SEIC does not have more than five water users in the company and/or more than 25,000 acres of irrigated land as required under Sections 42-219 and 42-211(2)(h), Idaho Code. IDWR worked with SEIC last year on its SRBA claims and has already made recommendations on the SEIC water rights and the legal place of use descriptions under those rights. You signed an Amended Notice of Claim to Water Right 02-2269 in the SRBA on June 23, 2003 and specifically did not include the irrigated land in Section 6, T5S, R7E. A conversation memorandum in IDWR's adjudication files dated December 3, 2003, also documents that Steve Hannula of ERO Resources Corporation was representing

pursuing a claim establishing a general place of use within a service area boundary. The SEIC rights do not include the 144 acres in Section 6, T5S, R7E.

The irrigation of the 144 acres in Section 6, Township 5 South, Range 7 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 6, T5S, R7E 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 forty three thousand two hundred dollars (\$43,200), 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, 2004.

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: Glen Saxton, IDWR Administrator
John Westra, IDWR Western Regional Manager
Cynthia Clark, IDWR
John Homan, Idaho Deputy Attorney General