



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 28, 2003

No Tellum Creek Ranch LLC
c/o Mark Scheu
4550 E Thousand Oaks Blvd #202
West Lake Village, CA 91362

Re: October 23, 2003 site visit to No Tellum Creek Ranch diversions
Revised Consent Order and Agreement

Dear Mr. Scheu:

The Water District 34 Watermaster and I visited seven surface water diversions belonging to No Tellum Creek Ranch, LLC with you on October 23, 2003. We appreciate your interest in understanding your water rights and bringing your diversions into compliance with Idaho Department of Water Resources (IDWR) requirements for lockable controlling works and measuring devices.

As you requested, the attached map shows the locations of the diversions we visited, and the locations of the points of diversion (PODs) and places of use (POUs) authorized by your water rights. Water rights 34-626A, 34-627A, 34-628A, 34-629A, and 34-630A authorize diversion of water from the Big Lost River at the Pence diversion and from Parsons Creek at the Zollinger/No Tellum diversion. This group of water rights authorizes irrigation of 208 acres within the area described on the water right proof reports that I provided to you during the site visit. This acreage is delineated with blue hatching on the attached map.

Water right 34-13622 authorizes diversion of ground water from the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 30, T8N R23E for irrigation of 16 acres located in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 30. This acreage is delineated with orange hatching on the attached map.

Water rights 34-443, 34-444, and 34-445 authorize irrigation of 310 acres within the area described on the water right proof reports that I provided to you during the site visit. This acreage is delineated with green hatching on the attached map. This group of water rights authorizes diversion from Parsons Creek at three POD locations. Based on our recent site visit, it appears the ranch has five diversions used to deliver water to the POU covered by these water rights. Three of these diversions are located on Parsons Creek, and two are located on Pole Stackyard Creek. The legal descriptions of the diversion locations, based on GPS data collected by IDWR staff, are listed in the following table. As you can see by comparing this list with the water right proof reports that I provided to you during the site visit, only two of the these diversion locations match the POD locations authorized by the water rights.

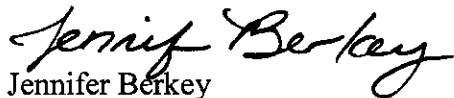
DIVERSION NAME	SOURCE	LEGAL DESCRIPTION
No Tellum 1	Parsons Creek	NW ¼ SW ¼ Section 30, T8N R23E
No Tellum 2	Parsons Creek	SW ¼ SW ¼ Section 30, T8N R23E
No Tellum 3	Parsons Creek	NE ¼ NW ¼ Section 31, T8N R23E
No Tellum 4	Pole Stackyard Creek	SE ¼ NW ¼ Section 31, T8N R23E
No Tellum 5	Pole Stackyard Creek	SE ¼ NW ¼ Section 31, T8N R23E

As we discussed during the site visit, you will need to file an Application for Transfer of Water Right to change a point of diversion, add two diversion points, and add Pole Stackyard Creek as a source. An application form and instructions are attached. The application should be filed with the IDWR Eastern Region office. Please contact the Eastern Region office if you have questions regarding the application process. The address and phone number are listed in the instructions. Additional copies of the application form can be obtained from our web site at http://www.idwr.state.id.us/water/rights/water_rights_forms.htm. Because IDWR is required to issue a legal notice of the transfer application and address protests from other water users, the transfer process can take some time. I recommend that you apply for the transfer as soon as possible if you wish to use these points of diversion next irrigation season. Diversions from No Tellum 3, No Tellum 4, and No Tellum 5 will not be authorized by your water rights until the transfer has been approved by IDWR.

Please note that all diversions from Parsons Creek and Pole Stackyard Creek are required to install and maintain lockable controlling works and measuring devices in accordance with the administrative order dated December 6, 2001. If your transfer application is approved for No Tellum 3, No Tellum 4, and No Tellum 5, lockable headgates and measuring devices will be required at these diversions prior to diverting water.

Please find enclosed a revised Consent Order and Agreement, which has been modified to reflect your comments and address issues related to the unauthorized PODs. Note the terms of the agreement and all compliance dates and fees or civil penalties stipulated in the attached order. Please carefully review and consider the terms and conditions of this proposed order and agreement. Please contact Tim Luke or myself if you have any comments or questions regarding the revised consent order. If you agree with the terms and conditions, please sign the document and return it to Tim Luke or myself at this office as soon as possible.

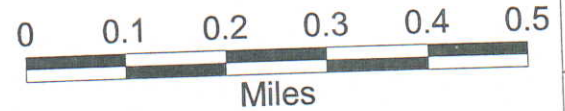
Respectfully,


Jennifer Berkey
Water Distribution Section

Cc: Bob Duke, Watermaster, Water District 34
IDWR Eastern Region

NO TELLUM CREEK RANCH WATER RIGHTS AND DIVERSIONS

Idaho Department of Water Resources
October 20, 2003



PENCE DIVERSION 30

Gravel Pit

CEDAR

ZOLLINGER/NO TELLUM

NO TELLUM 1

Parsons

NO TELLUM 2

6128

NO TELLUM 3

6111

RIVER

LEGEND

No Tellum Creek Ranch boundaries
(based on tax lot data provided by
Custer County)

Place of use authorized
by decreed water rights

- 34-443, 34-444, 34-445
- 34-626A through 34-630A
- 34-13622 (Groundwater)

Point of diversion authorized
by decreed water rights

- 34-443, 34-444, 34-445
- 34-626A through 34-630A
- 34-13622 (Groundwater)

Diversion locations observed
(location based on GPS data
collected by IDWR between
October 2002 and October 2003)

- 34-443, 34-444, 34-445
- 34-626A through 34-630A
- Unauthorized POD

NO TELLUM 4

NO TELLUM 5

Pole

Creek

Stackyard

31

6110