



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098  
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February 5, 2000

DIRK KEMPTHORNE  
GOVERNOR

Carl Jorgensen  
1699 Lloyd Rd.  
Bancroft, ID 83217

KARL J. DREHER  
DIRECTOR

Re: Notice of Violation and Cease and Desist Order; Diversion of Water not in  
Conformance with a Valid Water Right

Dear Mr. Jorgensen,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion of  
ground water to an unauthorized place of use. Please note all civil penalties and  
compliance dates stipulated in the attached order. Please also note your opportunity to  
request a compliance conference concerning this matter as well as the time frame and  
manner in which such a request must be made.

Respectfully,

A handwritten signature in black ink that reads "Tim Luke". The signature is written in a cursive style.

Tim Luke

Cc: Craig Shuler, Watermaster  
Harold Jones, Eastern Region

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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE**

**STATE OF IDAHO**

IN THE MATTER OF DIVERSION )  
OF WATER BY CARL JORGENSEN ) NOTICE OF VIOLATION  
NOT IN CONFORMANCE WITH ) AND CEASE AND DESIST  
VALID WATER RIGHTS ) ORDER

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to appropriation and distribution of water, has investigated the use of water by Carl Jorgensen (herein referred as Jorgensen).

Based on the department's investigation and understanding of the law, the Director finds, concludes and orders as follows:

**FINDINGS OF FACT**

1. That Jorgensen owns decreed water right no. 13-07161 authorizing diversion of 4.54 cfs of ground water from a well located in T9N, R40E, Section 32, NWNW. The right also authorizes irrigation for use on 230 acres located within the NW1/4 and NWSW of Section 32, and the SESW of Section 29, T9N, and R40E. The department's records officially show that the US Department of Agriculture Farmers Home Administration (currently known as the Farm Service Agency) owns water right 13-07161. However, information available to the Department through the Farm Service Agency and Water District 13-T indicate that Jorgensen is the current owner of right 13-07161 and the land to which this right is appurtenant.
2. That on June 18, 1999, staff from the department visited Jorgensen at the well located in Section 32 to discuss resolution of complaints concerning Jorgensen's alleged use of water from this well on lands located west of the well and across the county road. The lands in question do not constitute the place of use under water right 13-07161 and instead are irrigated with water diverted from the Bear River via the Last Chance Canal. That Jorgensen acknowledged that he owned the lands and irrigation systems located across the county road and that those lands are normally irrigated from the Last Chance Canal system. That the lands in question across the county road are located in Section 31, T9S, R40E, and Section 6, T10S, R40E.
3. That during the June 18<sup>th</sup> meeting, Jorgensen showed department staff that a one-way check valve had been installed on the mainline running west of the well. This check

valve was installed to prevent the diversion of ground water to lands across the county road. The department representative was satisfied with the installation of the valve.

4. That on October 9, 1999, the duly appointed watermaster of Water District 13-T, Craig Shuler visited the Jorgensen well in Section 32 for the purpose of making a water level measurement. At the time of this visit, Mr. Shuler noted that the well pump was running and water was being diverted but the pivot and wheel lines located near the well were not being used on those lands in Section 29 and 32 described under water right 13-07161.

5. That on October 13, 1999, watermaster Craig Shuler again visited the Jorgensen well in Section 32. Shuler again observed that the well was running but that no water was being diverted to the pivot or wheel lines near the well in Section 32 and 29. Shuler further noted that water appeared to be going past the one-way check valve on the west mainline. Shuler further observed that an irrigation pivot was running south west of the well and across the county road on land owned by Jorgensen. The apparent location of the pivot being used on this date was within Section 31, T9S, and R40E. Shuler also noted that there was no water running in the Last Chance Canal North Extension Lateral that normally is used to irrigate the land across the county road owned by Jorgensen.

6. That on October 15, 1999, department staff contacted Max Rigby, ditch rider for the Last Chance Canal Company (Last Chance) concerning shut off dates and deliveries of water to the canal that supplies water to the North Extension Lateral. Mr. Rigby advised the department that water had been completely shut off to the lateral on October 12, 1999, between 5:30 to 6:30 p.m.

7. That on October 14, 1999, Mr. Shuler contacted Jorgensen about the use of the well in Section 29. According to Shuler, Jorgensen stated that the well in Section 32 was used on October 14 with the pivot located near the well in Section 32 and the land covered by water right 13-07161.

8. That on October 26, 1999, department staff sent correspondence to Jorgensen advising him of the watermaster's observations and potential unauthorized use of water under water right 13-07161. The department provided Jorgensen the opportunity to account for the use and operation of the well in Section 32 between October 9 and October 13.

9. That in response to the department's letter of October 26, 1999, Jorgensen contacted Tim Luke, department staff member, and explained to Luke that there may have been some mistake or misunderstanding regarding the watermaster's observation and use of the well in Section 32. Jorgensen further explained that he needed to contact his sons and other employees concerning the use of the well during the period in question.

10. That on November 3, 1999, Tim Luke sent a letter to Jorgensen on behalf of the department asking Jorgensen to submit a written explanation to the department concerning this matter.

11. That on November 19, 1999, Jorgensen sent a letter to the department stating that he had checked with his sons or other employees concerning the use of the well. Jorgensen acknowledged that the check valve on the west mainline had been reversed and water was used on lands other than that described by right 13-07161. Jorgensen's letter, received by the Department on November 22, 1999, further explained that they had used the well because canal water was not available and they needed to complete repairs and testing of a pivot. Jorgensen's letter did not specify how long the well was used on lands other than those covered by water right 13-07161.

### CONCLUSIONS OF LAW

1. Idaho Code 42-1701B(6)(a) states, in pertinent part:

...that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:

(ii) For irrigation uses, three hundred dollars (\$300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

2. At the beginning of the 1999 irrigation season, Jorgensen had been advised by department staff of the concerns about using right 13-07161 on lands other than those to which it is appurtenant. Specifically, department staff notified Jorgensen that it had received complaints that Jorgensen had used the well in Section 32 to irrigate some land located west of the well across the county road in Section 31, T9S, R40E, and Section 6, T10S, R40E. In response to these concerns, Jorgensen showed department staff that a one-way check valve had been installed to prohibit the conveyance of water to lands other than those under right 13-07161.

3. Based on investigation by the Water District 13-T watermaster and the department, as well as subsequent acknowledgement by Jorgensen that the one-way check valve had been reversed, Jorgensen is found to have used ground water on certain lands that are not authorized as a valid place of use under right 13-07161. Evidence exists that water from the well under right 13-07161 was used to irrigate land located west of the well and across the county road in T9S, R40E, Section 31. Jorgensen has not provided detailed information to the department concerning the length of time the well may have been used on lands not authorized by right 13-07161.

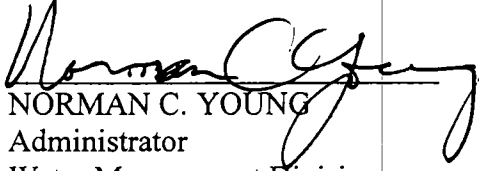
4. The director should issue a Notice of Violation instructing Jorgensen to cease and desist diverting water to lands not described as a place of use as authorized by Jorgensen's ground water rights.

## ORDER

IT IS HEREBY ORDERED as follows:

1. Jorgensen shall cease and desist diverting water and applying it to lands not in accordance with water right 13-07161.
2. For failure to comply with the law and authorized water rights, Jorgensen shall pay a one thousand-dollar (\$1,000.00) civil penalty to the department. The penalty shall be paid by March 1, 2000.
3. For any future diversion of water or application of water to lands not authorized by the water rights, or by subsequent order and decision by the department, Jorgensen shall pay a civil penalty of three hundred dollars (\$300) annually per acre for each acre that is irrigated and that is not in conformance with the water rights, the final order, or subsequent decision by the department.
4. Prior to diverting any water from the well in Section 32, Jorgensen shall make modifications to the west mainline to prevent using water from the well on lands other than right 13-07161. Possible modifications may include welding the one-way check valve to the mainline, disconnecting the mainline from the well, or installing some other control valve that will prevent water flow into the mainline. Jorgensen shall first notify the watermaster and department of any proposed modification prior to making the change. The watermaster or department staff shall inspect any modification or installation.
5. Jorgensen is entitled to a **Compliance Conference** with department staff if Jorgensen submits a written request for a conference to the department within fourteen (14) days of receipt of the Notice of Violation. The written request must describe how Jorgensen will comply with the law.
6. Jorgensen shall have the opportunity to enter into a second **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 4<sup>TH</sup> day of February, 2000.

  
NORMAN C. YOUNG  
Administrator  
Water Management Division