



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

April 21, 2004

McFarland Livestock Co. Inc.  
PO Box 50  
Lemhi, ID 83465

Karl Tyler Chevrolet Inc.  
PO Box 16025  
Missoula, MT 59808

RECEIVED

APR 26 2004

Department of Water Resources  
Eastern Region

CERTIFIED MAIL

Re: Berm Diversion in Hawley Creek at Lower McFarland Diversion; Diversion of Water during the Non-Irrigation Season

Gentlemen:

The Idaho Department of Water Resources ("IDWR") has received a number of informal inquiries during the past six months regarding the berm structure on Hawley Creek that is used as a diversion for the delivery of certain decreed water rights owned by McFarland Livestock Co. ("McFarland"), and Karl Tyler Chevrolet Inc. ("Tyler"). This diversion is known to IDWR as the Lower McFarland Diversion, located at Township 15N, Range 27E, Section 3, SENE. The water rights at this diversion authorize irrigation use only, from March 15 to November 15. The water rights do not authorize any diversion of water during the non-irrigation season, yet the berm structure diverts water from Hawley Creek to the Lower McFarland Ditch during the entire non-irrigation season. A review of claims filed in the Snake River Basin Adjudication ("SRBA") shows that no claims have been filed to divert water at this location during the non-irrigation season. The berm structure has no controlling or regulating works that allows water to by-pass the ditch heading.

The purpose of this letter is to formally advise you of concerns regarding the diversion of water at the above referenced location during the non-irrigation season without any authorized water rights. Please note that continued diversion of water to the ditch at this location during the non-irrigation season without a valid water right is illegal pursuant to Section 42-351, Idaho Code, and will result in IDWR issuing a Notice of Violation pursuant to Section 42-1701B, Idaho Code. Issuance of a Notice of Violation may carry civil penalties not to exceed fifty dollars (\$50.00) per one-tenth (0.1) cubic feet per second of water diverted per calendar day, up to a maximum of \$50,000 per year for water illegally used or diverted.

To avoid a potential non-authorized use during the non-irrigation season, IDWR recommends that you modify the diversion berm at the Lower McFarland Ditch with appropriate, lockable control gates prior to October 16, or the start of the non-irrigation season.

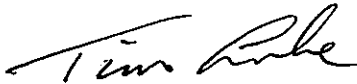
Lower McFarland Diversion

4/21/2004

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You may contact me directly at 208-327-7864 regarding questions and/or resolution of this matter.

Respectfully,



Tim Luke  
Manager, Water Distribution Section

c: IDWR Eastern Region

Bob Foster, IDWR Salmon Field Office

Dan Smith, Watermaster, Water District 74-W

Glen Saxton, Administrator, IDWR Water Management Division

Dave Tuthill, IDWR Adjudication Bureau Chief

Bill Graham, IDWR Planning Bureau Chief

Harriet Hensley, Deputy Attorney General, Idaho Attorney General's Office

John Homan, Deputy Attorney General, Idaho Attorney General's Office