



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

SKIP

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 28, 1996

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217

RECEIVED
JUL 02 1996
Department of Water Resources
Eastern Region

Dear Mr. Neibaur:

Enclosed is a Notice of Violation/Order requiring that you conform with the use authorized under your existing water rights. Please note that you have the right to a compliance conference to discuss the facts of this matter. If you want a compliance conference, you need to notify the department within 15 days of receipt of the Notice of Violation/Order.

If you have questions, please contact me at (208)327-7910.

Sincerely,

NORMAN C. YOUNG
Administrator
Water Management Division

✓ cc: IDWR Eastern Regional Office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED

JUL 02 1996

Department of Water Resources
Eastern Region

**IN THE MATTER OF DIVERSION OF)
WATER BY GEM VALLEY FARMS)
AND/OR CHAD NEIBAUR WITHOUT)
A VALID WATER RIGHT OR NOT IN)
CONFORMANCE WITH A VALID)
WATER RIGHT)**

**NOTICE OF VIOLATION
AND CEASE AND DESIST
ORDER**

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the state of Idaho and the rules promulgated by the Department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, has investigated the use of water by Gem Valley Farms (Gem Valley) and/or Chad Neibaur (Neibaur).

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

FINDINGS OF FACT

1. Gem Valley owns or has control of water rights decreed as follows in the Bancroft-Lund adjudication.

WATER RIGHT NO. 13-02259

FLOW RATE 2.10 cfs	SOURCE Groundwater	PRIORITY 8/5/1963	POINT OF DIVERSION T9S, R40, Section 20, NENW ¹
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NENW		38
T9S, R40E, Section 20	NWNW		37
T9S, R40E, Section 20	SWNW		39
T9S, R40E, Section 20	SEnw		40
TOTAL			154

¹Public land survey descriptions of 40 acre parcels in this decision without a fraction following the quadrant description assume a fractional component of "1/4" stated as "quarter."

WATER RIGHT NO. 13-07165

FLOW RATE 3.12 cfs	SOURCE Groundwater	PRIORITY 4/6/1977	POINT OF DIVERSION T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 20	NESW	40	
T9S, R40E, Section 20	NWSW	39	
T9S, R40E, Section 20	SWSW	38	
T9S, R40E, Section 20	SESW	39	
TOTAL		156	

WATER RIGHT NO. 13-07261

FLOW RATE 2.00 cfs	SOURCE Groundwater	PRIORITY 9/10/1979	POINT OF DIVERSION² T9S, R40E, Section 20, SWSW
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 19	NESE	37	
T9S, R40E, Section 19	NWSE	38	
T9S, R40E, Section 19	SWSE	39	
T9S, R40E, Section 19	SESE	39	
TOTAL		153	

² Same well as the point of diversion described by water right no. 13-07165.

WATER RIGHT NO. 13-07198

FLOW RATE 5.23 cfs	SOURCE Groundwater	PRIORITY 6/20/1977	POINT OF DIVERSION T9S, R40E, Section 29, SENE
PLACE OF USE DESCRIPTION		ACRES	
T9S, R40E, Section 29	NENE		32
T9S, R40E, Section 29	NWNE		32
T9S, R40E, Section 29	SWNE		32
T9S, R40E, Section 29	SENE		32
T9S, R40E, Section 29	NENW		32
T9S, R40E, Section 29	NWNW		32
T9S, R40E, Section 29	SWNW		32
T9S, R40E, Section 29	SENE		32
T9S, R40E, Section 29	NESW		39
T9S, R40E, Section 29	SESW		3
T9S, R40E, Section 29	NWSE		40
T9S, R40E, Section 29	SWSE		7
TOTAL			345

2. Gem Valley filed application for transfer nos. 4703, 4704 and 4705 proposing to change the place of use and point of diversion as follows:

NORTH SYSTEM
 (two large pivots, one small pivot)
Point of Diversion: T9S, R40E, Section 20, NENW

Water Right Nos.		Flow Rate (cfs)	
13-02259		2.10	
13-07198C		1.66	
TOTAL		3.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 20	NENE	29	13-07198C
T9S, R40E, Section 20	NWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	30	13-07198C
T9S, R40E, Section 20	SWNE	7	13-02259
T9S, R40E, Section 20	SENE	21	13-07198C
T9S, R40E, Section 20	SENE	8	13-02259
T9S, R40E, Section 20	NENW	29	13-02259
T9S, R40E, Section 20	NWNW	29	13-02259
T9S, R40E, Section 20	SWNW	30	13-02259
T9S, R40E, Section 20	SENW	37	13-02259
T9S, R40E, Section 20	NESW	7	13-02259
T9S, R40E, Section 20	NWSE	7	13-02259
TOTAL		264	

CENTER SYSTEM
 (three large pivots)
Point of Diversion: T9S, R40E, Section 20, SWSW

Water Right		Flow Rate (cfs)	
13-07165		3.12	
13-07261		2.00	
13-07198B		0.64	
TOTAL		5.76	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 19	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 19	NWSE	29	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07165 & 13-07261
T9S, R40E, Section 19	SWSE	15	13-07198B
T9S, R40E, Section 19	SESE	27	13-07198B
T9S, R40E, Section 20	NESW	30	13-07165 & 13-07261
T9S, R40E, Section 20	NWSW	29	13-07165 & 13-07261
T9S, R40E, Section 20	SWSW	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESW	29	13-07165 & 13-07261
T9S, R40E, Section 20	NESE	29	13-07165 & 13-07261
T9S, R40E, Section 20	NWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SWSE	30	13-07165 & 13-07261
T9S, R40E, Section 20	SESE	29	13-07165 & 13-07261
TOTAL		351	

SOUTH SYSTEM
 (one large pivot, one medium pivot)
Point of Diversion: T9S, R40E, Section 29, SENW

Water Right		Flow Rate (cfs)	
13-07198A		2.93	
Place of Use Description		Acres	Water Right
T9S, R40E, Section 29	NENE	29	13-07198A
T9S, R40E, Section 29	NWNE	30	13-07198A
T9S, R40E, Section 29	SWNE	37	13-07198A
T9S, R40E, Section 29	SENE	29	13-07198A
T9S, R40E, Section 29	SENW	7	13-07198A
T9S, R40E, Section 29	NESW	31	13-07198A
T9S, R40E, Section 29	NWSE	30	13-07198A
TOTAL		193	

3. On April 26, 1996, a recommended order was issued which recommended approval of the application for transfer with conditions. A final decision was issued on June 27, 1996, which approved the applications for transfer. The following conditions have particular relevance to this order:

Irrigation from the well located in the SWSW, Section 20, T9S, R40E, B.M. (center well) is limited to 309 acres located within two circular pivots in the S 1/2 of Section 20, T9S, R40E, B.M. and one circular pivot located in the SE1/4 of Section 19, T9S, R40E, B.M. The acreage proposed for irrigation in the SE1/4 of Section 19, T9S, R40E, B.M. must be reduced by 42 acres. Irrigation from the center well of land located in the SWSE, Section 19, T9S, R40E, B.M. is limited to 15 acres. No land in the SESE, Section 19, T9S, R40E, B.M. may be irrigated with ground water or with surface water unless authorized pursuant to a valid water right. This condition will no longer be effective, however, if conditions 14 through 18 are fully satisfied.

... Gem Valley may only irrigate lands authorized for irrigation by water right nos. 13-07198, 13-02259, 13-07165 and 13-07261 from ground water as described by the water rights prior to filing of the applications for transfer, unless and until Gem Valley submits a plan of implementation for the transfers and the plan is approved by the department. The plan of implementation must insure that:

- (a) The total number of acres irrigated in 1996, derived by summing all of the acres irrigated from ground water at any time during 1996, is limited to 808 acres; and

(b) The total number of acres irrigated in 1996 from the center well located in the SWSW, Section 20, T9S, R40E, B.M., derived by summing all of the acres irrigated from the center well at any time during 1996, is limited to 309 acres, or 352 acres if conditions 14 through 18 are fully satisfied.

4. On June 20, 1996, an employee of the Department of Water Resources investigated the use of water by Gem Valley.

5. The investigation showed that Gem Valley is applying water to places of use located in the NE1/4 of Section 20, T9S, R40E, B.M. from the well located in the SWSW, Sec. 20, T9S, R40E, B.M. (center well). Irrigation of this parcel from this well is not authorized under the water rights as they existed prior to or after the approval of the transfers described in Finding No. 2.

6. The investigation also showed that Gem Valley applied and is applying ground water from the well located in the SENW, Section 29, T9N, R40E, B.M. (south well) to a circular pivot located in the NW1/4 of Section 29, T9N, R40E, B.M. Prior to issuance of the recommended order, water right no. 13-7198A authorized irrigation of these lands. The applications for transfer recommended order proposed removal of water right no. 13-7198A from the circular pivot to other lands. Gem Valley proposed to irrigate the circular pivot with surface water.

7. The investigation also shows that the land under the entire circular pivot in the SE1/4 of Section 19, T9S, R40E, B.M., was being irrigated.

CONCLUSIONS OF LAW

1. Idaho Code § 42-350(1) states in pertinent part:

If the Director of the Department of Water Resources finds, on the basis of available information at any time after a license is issued, that the licensee . . . has wilfully or intentionally failed to comply with the provisions of law governing the license, then the Director of the Department of Water Resources may issue . . . an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license or in violation of the provisions of the law governing the license.

2. Idaho Code § 42-351(1) states in pertinent part:

If the Director of the Department of Water Resources finds, on the basis of available information, that a person is . . . applying water or has applied water not in conformance with a valid water right, then the Director of the Department of Water Resources . . . may commence an administrative enforcement action by issuing the person a written notice of violation

directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right. . . . The notice of violation shall state the remedy, including any restoration and mitigation measures, and the civil penalty the director seeks for redress of the violation. . . .

3. Idaho Code § 42-352 states, in pertinent part:

Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person, shall be subject to a civil penalty to be imposed by the Director of the Department of Water Resources not to exceed one hundred dollars (\$100.00) per diversion for each calendar day, or any part of a calendar day following service of the cease and desist order in which the illegal diversion of water occurs.

4. Investigation by the Department found that water was being applied to the old place of use described by the water rights prior to the filing of applications for transfer nos. 4703, 4704, and 4705.

5. An application for transfer is not approved until the final order is issued. Prior to the final order, Gem Valley was only authorized to divert and apply water as described by the water rights prior to the filing of the applications for transfer or issuance of the recommended order.

6. Irrigation of land located in the NE1/4 of Section 20, T9S, R40E, B.M. was not approved before the final order and is not presently approved by the Department during 1996.

7. Irrigation of any land not identified by the water rights as recorded prior to filing of the applications for transfer is a violation of the final order of the Director until a plan of implementation is approved by the Department.

8. Gem Valley has failed to adhere to the requirements of the law, the authorized water rights and the conditions of approval of the transfer.

9. The Director should issue a Notice of Violation instructing the water user to immediately cease and desist diverting water to lands not described as a place of use as originally authorized.

ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall immediately cease and desist diverting water and applying it to lands not in accordance with the water rights as the water rights were described prior to the filing of the applications for transfer, unless and until the Department approves diversion from other wells and application of water to other lands.

2. For failure to comply with the law and the authorized water rights, Gem Valley shall pay a one-thousand dollar (\$1,000.00) civil penalty to the Department. The penalty shall be paid by July 20, 1996.


3. For any future diversion of water or application of water to lands not authorized by the water rights, the final order, or by subsequent decision by the Department, the water user shall pay a civil penalty of one hundred dollars (\$100.00) per violation for each day that water is diverted or water is applied not in conformance with the water rights, the final order, or subsequent decision by the Department.

4. The cease and desist orders shall remain in effect during 1996 and future years.

5. Gem Valley is entitled to a **Compliance Conference** with Department staff if Gem Valley submits a written request for a conference to the Department within fifteen (15) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

6. Gem Valley shall have the opportunity to enter into a **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 28TH day of June, 1996.


NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of June, 1996, I mailed a true and correct copy of the foregoing **NOTICE OF VIOLATION AND CEASE AND DESIST ORDER** on the following person(s) listed below by certified mail, postage prepaid and addressed as follows:

Chad Neibaur
Gem Valley Farms
1550 Central Rd.
Bancroft, ID 83217



DEBORAH DREW-ELLIS
Legal Secretary