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BEFORE THE DEPARTMENT OF WATER RESOURCES

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AUG 19 1996

Department of Water Resources

OF THE

STATE OF IDAHO

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 )  
\_\_\_\_\_ )

AGREEMENT AND  
CONSENT ORDER

The Director of the Idaho Department of Water Resources (department), being charged with the duty of enforcing certain statutes of the state of Idaho and the rules of the department, and being authorized to order the cessation of violations of the provisions of law relating to appropriation and distribution of water, hereby enter into this Agreement and Consent Order with Chad Neibaur, acting on his own behalf and for Gem Valley Farms, Inc. (herein collectively termed "Gem Valley").

NOW, THEREFORE, following a compliance conference and before the taking of any testimony herein, and without hearing or contested administrative adjudication of any issue of fact or law, and upon the consent of the parties, it is HEREBY STIPULATED AS FOLLOWS:

**FINDINGS**

1. That on June 28, 1996, the department issued a Notice of Violation and Cease and Desist Order, pursuant to the provisions of Section 42-351, Idaho Code, ordering Gem Valley immediately to cease diverting water and applying it to lands not in accordance with the water rights for those lands.

2. That the findings of fact and conclusions of law contained in the Notice of Violation and Cease and Desist Order are incorporated herein by reference.

3. That a compliance conference, pursuant to Section 42-351, Idaho Code, was held on June 10, 1996, at Grace, Idaho. Gem Valley provided information demonstrating that ground water is being used for the 1996 irrigation season at lower diversion rates and on fewer acres than authorized under the applicable water rights. However, some ground water has been applied to lands from wells other than those authorized under the water rights.

4. That Gem Valley desires to remedy the violations of Idaho water law alleged in the Notice of Violation through compliance with the terms and conditions of this Agreement and Consent Order which is entered into in accordance with the provisions of Section 42-351, Idaho Code.

### **AGREEMENT AND ORDER**

Based upon the foregoing findings and pursuant to agreement of the parties, the department orders as follows:

1. That Gem Valley will endeavor to divert and use water in compliance with the water rights as recorded.

2. That Gem Valley will pay a civil penalty of \$100 per diversion for each day or part thereof that water is used in violation of the terms and conditions of the applicable water rights after service of the Notice of Violation and Cease and Desist Order. Civil penalties will be paid within 30 days of notice given by the department.

3. That Gem Valley will immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights Nos. 13-02259, 13-07165, 13-07261, and 13-07198 and on the system that carries canal water to commingle with ground water for the "south system" as described in Transfer Nos. 4703, 4704, and 4705.

4. That Gem Valley will not operate pivot systems located in the NW quarter of Section 29 and the SW quarter of Section 20, Township 9S, Range 40E, B.M., at any time canal water is not being supplied at a rate adequate to supply these pivot systems.

5. The department will suspend imposition of the \$1000.00 civil penalty due under provision No. 2. of the Notice of Violation pending compliance with this Agreement and Consent Order. The department will require payment of the \$1000.00 civil penalty if Gem Valley fails to fully comply with the terms of this Agreement and Consent Order.

6. This Agreement and Consent Order shall be effective immediately for the 1996 irrigation season only upon signing by both parties. Compliance with the Agreement and Consent Order by Gem Valley shall preclude any civil enforcement action by the department for the violations alleged in the Notice of Violation.

7. By signing this Agreement and Consent Order, Gem Valley hereby waives any right that it otherwise has to contest the provisions of the Agreement and Consent Order.

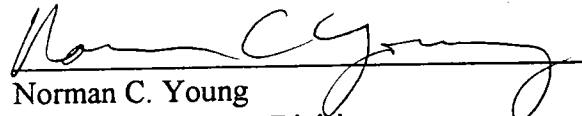
8. If Gem Valley does not comply with the terms of this Agreement and Consent Order, the department may seek and obtain in an appropriate district court specific performance of the Agreement and Consent Order and such other relief as authorized by law.

9. Upon a determination by the director of the department that unauthorized use of ground water by Gem Valley is injuring the use of another water right, the department may take action in accordance with applicable law to prevent continued unauthorized use.

10. This Agreement and Consent Order shall be executed by the parties in duplicate.

SIGNED this 23<sup>RD</sup> day of July, 1996.


**KARL J. DREHER**  
Director

  
Norman C. Young  
Water Management Division

### CONSENT

Gem Valley hereby acknowledges and agrees to the terms and conditions of this Agreement and Consent Order and consents to its issuance.

SIGNED this \_\_\_ day of July, 1996.

  
CHAD NEIBAUR  
Gem Valley Farms