



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 23, 1999

RECEIVED

JUN 28 1999

Department of Water Resources
Eastern Region

Gem Valley Farms
C/o Chad Neibaur
1550 Bancroft Rd
Bancroft, ID 83217

Re: Notice of Violation and Cease and Desist Order; Diversion of Water from Second Well in the NW1/4 of Section 20, T9S, R40E

Dear Mr. Niebaur,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion facilities under Transfer No.s 4703, 4704 and 4705, and failure to comply with the Agreement and Consent Order dated July 23, 1996. 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. Please also note on the order the time frame and manner in which such a request must be made.

The purpose of this letter is to also formally notify you that you are prohibited from using both your old well and your replacement well located in the NW1/4 of Section 20, T9S, R40E, B.M. You may use one of the two wells this irrigation season, but not both wells unless and until a water right transfer has been approved which adds a second point of diversion to the rights authorized to be diverted from this location. The transfer that you filed last year, Transfer No. 5353, did not request adding a second point of diversion. The advertising and processing of that transfer did not involve the addition of a second point of diversion. As a result, a new transfer must be approved in order to use both wells at this location. The department suggests that you immediately file a water right transfer if you intend to use a second well at this location. It is possible the department could allow diversion of water from a second well if a transfer is filed and processing is completed to some point. However, you are prohibited from using a second well until you have received some formal approval from IDWR. Department staff and the water district watermaster will monitor the water use and power consumption at this location.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tim Luke', is written over a horizontal line.

Tim Luke

Cc: Craig Shuler, Watermaster
Howard Jones, Eastern Region
Norman C. Young, IDWR

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

| | |
|---------------------------------|----------------------|
| IN THE MATTER OF DIVERSION OF) | |
| WATER BY GEM VALLEY FARMS) | |
| AND/OR CHAD NIEBAUR NOT IN) | |
| CONFORMANCE WITH AGREEMENT) | NOTICE OF VIOLATION |
| AND CONSENT ORDER OR NOT IN) | AND CEASE AND DESIST |
| CONFORMANCE WITH VALID) | ORDER |
| <u>WATER RIGHTS)</u> | |

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing specific 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 Gem Valley Farms, Inc. and/or Chad Neibaur (herein collectively termed "Gem Valley").

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

FINDINGS OF FACT

1. That on July 23, 1996, the Director of the department and Gem Valley entered into an Agreement and Consent Order, pursuant to Section 42-351, Idaho Code whereby the department ordered Gem Valley to comply with certain provisions specified in the consent order.
2. That the findings of fact and conclusions of law contained in the Agreement and Consent Order are incorporated herein by reference.
3. That pursuant to the Agreement and Consent Order, Gem Valley agreed to endeavor to divert and use water in compliance with the water rights as recorded.
4. That pursuant to the Agreement and Consent Order, Gem Valley was required to immediately install and maintain measuring devices acceptable to the department on each diversion facility authorized under water rights No.s 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 No.s 4703, 4704, and 4705.
5. That pursuant to the Agreement and Consent Order, Gem Valley was required to pay a civil penalty of \$1000.00 if it failed to comply with the terms of the Agreement and Consent Order.

6. That based on investigation by department staff, Gem Valley has not installed or maintained measuring devices on any of the diversion facilities authorized under those water rights and transfers identified under Finding of Fact No. 3 above.

7. That Gem Valley has for the past three irrigation seasons commingled surface water with ground water from a well located in the SENW of Section 29, T9S, R40E, B.M., and thereby used ground water on lands not authorized by those water rights and Transfers identified in Finding of Fact No. 4.

8. That on October 10, 1996, staff from the Idaho Department of Water Resources found and documented that Gem Valley had diverted water from a well located in the SWSW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

9. That the Watermaster of Water District 13-T that was duly elected and appointed during 1998, reported to the Department that on July 8, 1998, Gem Valley had diverted water from the well located in the NESW of Section 20, T9S, R40E, B.M., for use on lands that were not authorized by water rights held by Gem Valley.

10. That Gem Valley has not endeavored to use water in compliance with the water rights as recorded.

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. Investigation by the department found that Gem Valley has not installed or maintained measuring devices on the diversion facilities identified under the water rights and transfers identified under Finding of Fact No. 4.

3. Past investigation by the department and monitoring by the water district watermaster has shown that Gem Valley has irrigated land from diversion facilities not authorized by water rights held by Gem Valley.

4. Gem Valley has failed to adhere to the requirements of the law, the terms of the Agreement and Consent Order dated July 23, 1996, and the authorized water rights as approved by Transfer No.s 4703, 4704 and 4705.

5. Gem Valley should pay a \$1000.00 civil penalty for failure to comply with the terms of the Agreement and Consent Order.

6. The director should issue a Notice of Violation instructing Gem Valley to immediately cease and desist diverting water to lands not described as a place of use as authorized by Gem Valley's water rights.

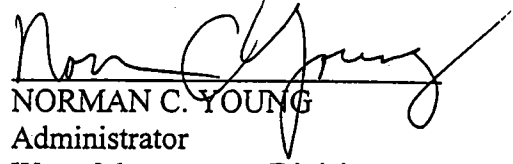
ORDER

IT IS HEREBY ORDERED as follows:

1. Gem Valley shall cease and desist diverting water from the diversion facilities under Transfers 4703, 4704 and 4705, by July 8, 1998 unless and until:
 - a) Gem Valley installs measuring devices as required by the Agreement and Consent Order, and;
 - b) Gem Valley configures its diversion and conveyance facilities in the SWSW of Section 20 and in the SENW of Section 29, T9S, R40E, B.M., in a manner that is consistent with its water rights. Specifically, Gem Valley must configure its well in Section 29 so that ground water use from the well is limited to use on the pivot in the NE1/4 of Section 29, and on 68 acres within the NESW, NWSE and SENW of Section 29. Gem Valley must also configure its diversion in the SWSW of Section 20 so that ground water diverted from this well is not diverted to the pivots located in the N1/2 of Section 20, the W1/2 of Section 16 as proposed by Transfer No. 5353, or the mini-pivot located in the center of section 20.
2. For failure to comply with the Agreement and Consent Order of July 23, 1996, Gem Valley shall pay a one thousand-dollar (\$1,000.00) civil penalty to the department. The penalty shall be paid by July 23, 1999.
3. For any future diversion of water or application of water to lands not authorized by the water rights, transfers, or by subsequent order and decision by the department, the water user 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. 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 fourteen (14) days of receipt of the Notice of Violation. The written request must describe how Gem Valley will comply with the law.

5. Gem Valley 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 22nd day of June, 1999.



NORMAN C. YOUNG
Administrator
Water Management Division