



State of Idaho

DEPARTMENT OF WATER RESOURCES

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November 29, 1999

DIRK KEMPTHORNE
GOVERNOR

Warren P. Lloyd
1475 Mountain Rd
Bancroft, ID 83217

KARL J. DREHER
DIRECTOR

Re: Your Correspondence of November 12, 1999 regarding Gem Valley Farms Water Transfer No.s 4703, 4704 and 4705.

Dear Mr. Lloyd,

The Department received the above referenced letter addressed to Mr. Dreher on November 15th. Both Mr. Dreher and Mr. Young have reviewed your letter and asked that I provide a response since I have worked with the issues that you have raised.

I think that you know by now that the Department issued a Notice of Violation (NOV) to Gem Valley Farms earlier this year for failure to comply with certain conditions of their approved transfers and/or failing to use water in a manner consistent with its water rights. I believe I discussed this matter with you recently and that the watermaster, Craig Shuler, also discussed this subject with you. For your benefit, I have included copies of the NOV and the subsequent Agreement and Consent Order entered into between Gem Valley Farms and the Department. I believe a review of these documents will address some of your questions. I will also address your questions individually in the order presented by your letter.

1) Acreage for irrigation in the S1/2 of Section 19, T9S, R40E, has not been reduced by 42 acres.

Your observation regarding the 42 acres is correct when comparing water rights place of use descriptions with actual irrigated acreage. Department staff and the local watermaster investigated this matter as early as 1996. This particular concern is one of the reasons IDWR issued the NOV to Gem Valley this year and required Gem Valley to file new transfer applications. Gem Valley has explained since the 1996 irrigation season that it did not accomplish the 1996 transfers as originally planned or approved. Specifically, Gem Valley acquired surface water canal shares and has been using that water on the SE1/4 of section 20, T9S R40E, rather than using ground water from the well in the SWSW of section 20 as approved by the transfers. Gem Valley reasoned that the non-application of ground water to the SE1/4 would enable it to irrigate the additional 42 acres in section 19 along with the existing pivots and several corners in the SE1/4 of section 19 and the SW1/4 of section 20. The approved transfers limited Gem Valley to irrigation of no more than 309 acres from the well in the SW1/4 of section 20. Gem Valley has argued, and IDWR agrees that Gem Valley has actually been irrigating fewer than 309 acres from the well in the SW1/4 of section 20. This fact alone however does not mean that Gem Valley is authorized to use ground water on lands not identified in their transfers or water rights. As a result, IDWR has required Gem Valley to file new water right transfer applications to correct the place of use discrepancies. Gem Valley did file a water right transfer this

summer in order to correct this place of use discrepancy. IDWR notes that you have filed protest against this transfer.

2) A new well has been constructed.

This observation is also correct. This matter was also addressed in the Department's NOV. It is our understanding that under the original transfers, Gem Valley had intended to replace a well in the NW1/4 of section 20, T9S, R40E. Due to problems in constructing the new well and further problems with yield from that new well, Gem Valley ended up using both the old and new wells in 1999. Gem Valley did not have authorization under its water rights to use both wells at this location. This was considered a violation under the IDWR NOV. Under the Agreement and Consent Order, IDWR allowed Gem Valley to use both wells provided that a new transfer application was filed to correct this problem. The transfer application was filed and does attempt to correct this problem. This transfer is included in the same transfer that you have protested.

3) Totalizing measuring device and lockable controlling works have not been installed.

Gem Valley's transfer applications approved in 1996 did include requirements to install measuring devices and lockable controlling works. The lack of measuring devices on a few wells was also an issue raised by the NOV. Through the Agreement and Consent Order, IDWR removed the measuring device requirements and agreed to use power records and derivation of Power Consumption Coefficients (PCC) to estimate withdrawals from these wells. IDWR recognizes that installation of measuring devices on these wells will require significant plumbing modifications in order for the devices to work. The department also recognizes that flow meters in this area tend to either fail or not be maintained by owners. I note in particular that your own measuring device has not worked over the past one or two seasons. Moreover, if the wells are restricted to the correct places of use and not commingled or tied in with other wells or sources of water, then the devices do not provide any significant monitoring advantages over use of power records and monitoring made by the watermaster.

The removal of measuring device requirements for Gem Valley's well in section 29, T9S R40E, is contingent on Gem Valley making certain modifications of that well in order to use a PCC and power records to estimate water use at that well. The water district watermaster installed a lock on the power supply of that well on about July 30, 1999 to prevent further use of ground water from that well since Gem Valley had not accomplished the configuration changes by July 30. Gem Valley has agreed to pursue the configuration changes and have them implemented prior to the next irrigation season.

Under the Agreement and Consent Order, the department during 1999 removed measuring device requirements for the wells located in the NW1/4 of section 20 contingent on IDWR and Gem Valley finding a suitable method to measure and/or monitor these wells. IDWR may require installation of measuring devices next year if a suitable method is not determined. Power records and PCC and/or some combination with time clocks may work for these wells particularly if each well has a dedicated power meter. I do not believe the wells had individual power meters during 1999.

A lock was installed during 1999 on a valve and mainline that connects the well in the SW1/4 of Section 20 to the wells or pivots in the N1/2 of section 20. It is my understanding that the watermaster showed you this lock during a recent inspection. The department did not feel that other locking devices were necessary other than the two described in this letter.

- 4) A well interference test has not been conducted for the well located in the SWSW, Section 20 and for the well located in the SENW, Section 29, T9S R40E.

The Department's order approving Gem Valley's transfers in April of 1996 required a well interference test only if Gem Valley sought to irrigate a total of 351 acres in the S1/2 of section 20 and the SE1/4 of section 19. As stated earlier, Gem Valley has not irrigated more than 309 acres within this place of use. The well interference test therefore is not required if Gem Valley irrigates 309 acres or less within this place of use.

At this point in time, the Department has no plans to rescind the order approving applications for transfer no. 4703, 4704 and 4705 as you requested. Through the 1999 NOV to Gem Valley and subsequent Agreement and Consent Order, IDWR is attempting to work with Gem Valley to remedy certain problems that both you and IDWR recognize. The filing of a new water right transfer application by Gem Valley is an important component of the remedy. We believe it is more prudent to proceed with the transfer process, which includes consideration of the protests filed by you and others.

When protests are filed against a transfer, IDWR often defers action until the applicant requests either a pre-hearing conference or a hearing. It is my understanding that Gem Valley has not yet requested a conference or formal hearing. Gem Valley has had sufficient time to make such a request. I do not believe it is in the interest of the parties and other water users in the area to further delay this matter. I am therefore forwarding a separate recommendation to administration and the regional office to proceed with scheduling a hearing of the transfer application and protests.

Please contact me at this office or by calling directly at 327-7864 if you have further questions regarding this matter.

Respectfully,



Tim Luke

Enclosure

Cc: Norman C. Young, IDWR
Harold Jones, Eastern Region
Chad Niebaur, Gem Valley Farms
Bart Christensen, Chairman, Water District 13-T Advisory Committee
Craig Shuler, Watermaster