



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
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DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

July 5, 2001

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

Re: Notice of Violation and Cease and Desist Order; Diversion of Water not in  
Conformance with a Valid Water Right

Dear Mr. Neibaur,

Enclosed is a Notice of Violation and Cease and Desist Order regarding your diversion of  
ground water to an unauthorized place of use. 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 as wells as the time frame and  
manner in which such a request must be made.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Tim Luke'.

Tim Luke  
Water Distribution Section

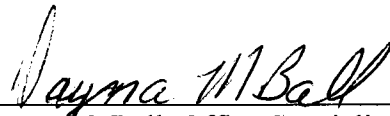
Cc: Craig Shuler, Watermaster  
Harold Jones, Eastern Region

**Attachment A**

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 6<sup>th</sup> day of July, 2001, the attached correspondence was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid, certified with a return receipt and properly addressed as follows:

Gem Valley Farms  
C/O Chad Neibaur  
1550 Central Rd  
Bancroft, Id 83217



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Dayna M. Ball, Office Specialist II  
Water Distribution Section

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DIVERSION )  
OF WATER BY GEM VALLEY FARMS ) NOTICE OF VIOLATION  
NOT IN CONFORMANCE WITH ) AND CEASE AND DESIST  
VALID WATER RIGHTS ) ORDER

The Director of the Department of Water Resources (department), being charged with the duty of protecting vested water rights, enforcing 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 (herein referred as 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. Gem Valley owns decreed water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B authorizing the combined diversion of 8.88 cfs of ground water from two wells located in T9S, R40E, Section 20, NENW and SWSW. These rights when combined authorize irrigation of 573 acres in any one year out of a total permissible place of use of 799 acres. In addition, rights 13-07165, 13-07261 and 13-07198B authorize a combined annual irrigation of 309 acres out of the total 799-acre permissible place of use.
2. The maximum combined use and irrigated acreage authorized under the above rights is subject to conditions of approval as set forth by water right transfer no. 5545, approved on May 4, 2000. Several neighboring water users protested this transfer. The protests were withdrawn based on a written agreement between Gem Valley and the protestants dated January 12, 2000. The agreement provides that Gem Valley must identify each year at the annual water district meeting the specific 309 acre place of use that is to be irrigated for the ensuing crop year under water rights 13-07165, 13-07261 and 13-07198B. The agreement further provides that each year the water district watermaster will be informed of the defined place of use and is empowered to enforce the issue of proper place of use with possible financial penalty.
3. On January 30, 2001, prior to the 2001 Water District 13-T meeting, Gem Valley provided the department a map showing the acres that would be irrigated in 2001 under

transfer no. 5545. The department subsequently provided this map to the water district watermaster. The map provided to the department showed the place of use location for the total 573 acres authorized by transfer 5545. The map specifically showed that a portion of a pivot located in the southeast quarter of Section 19, Township 9 South, Range 40 East, was to be idle in 2001 in order to comply with the 573 and 309 acre place of use limitations. The map showed that about 40 to 50 acres in the southeast portion of the pivot in Section 19 was not to be irrigated in 2001.

4. On June 1, 2001, the duly elected watermaster of Water District 13-T, Craig Shuler, made a routine inspection of the wells and irrigated place of use described under transfer 5545. Mr. Shuler observed that the 40 to 50 acres in Section 19 that were identified by Gem Valley as a non-irrigated place of use in 2001 had recently been irrigated. Mr. Shuler also observed that a grain crop had been planted in the entire pivot, including the area under the pivot that was supposed to be idle or non-irrigated in 2001. Mr. Shuler also confirmed that the remaining acreage under transfer 5545 that was identified as the place of use for 2001 was either recently irrigated or planted with a crop.

5. On June 5, 2001, the watermaster contacted Chad Neibaur of Gem Valley regarding the observations he made at the pivot in Section 19 on June 1<sup>st</sup>. Mr. Neibaur explained that he had leased the ground in question to a neighboring farmer and that the entire pivot was planted in grain. Mr. Neibaur further explained that he had advised the leasee of the place of use limitation at this pivot. Both he and the leasee were working on steps to prevent the pivot from watering the non-irrigated area that he identified on the map submitted to IDWR before the 2001 water district meeting. Mr. Neibaur acknowledged to the watermaster that the area that was not supposed to be irrigated in Section 19 was watered once on about May 27<sup>th</sup>.

6. On June 11, the department received a letter from the watermaster documenting the above referenced investigation and phone call with Chad Neibaur. In response to this letter, department representative Tim Luke spoke with Mr. Neibaur by phone on June 11<sup>th</sup> regarding the documentation submitted by the watermaster. Mr. Neibaur admitted to Mr. Luke that the land in question in Section 19 had mistakenly been irrigated once, on about May 27<sup>th</sup>. Mr. Neibaur confirmed that the land was leased and that the leasee was aware of the place of use limitations associated with the Section 19 pivot. Mr. Neibaur believed that the irrigation of the land in question by the lessee was the result of an honest mistake by the leasee and was not intentional. Neibaur explained that he and the leasee have since arranged the pivot so that it can not physically irrigate the additional acres in Section 19.

7. On June 28, 2001, department representative Tim Luke spoke with the watermaster, Craig Shuler, regarding any further place of use monitoring in Section 19 and other lands under transfer 5545. Mr. Shuler advised that he had not detected any further irrigation of the land in question in Section 19. Shuler also advised that he had found no other irregularities regarding the remaining place of use under transfer 5545.

## 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. Prior to the 2001 Water District 13-T meeting, Gem Valley submitted to the department a map depicting the irrigation place of use for 2001 for water right transfer 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B. Specifically, department staff notified Jorgensen that it had received complaints that Jorgensen had used the well in Section 32 to irrigate some land located west of the well across the county road in Section 31, T9S, R40E, and Section 6, T10S, R40E. In response to these concerns, Jorgensen showed department staff that a one-way check valve had been installed to prohibit the conveyance of water to lands other than those under right 13-07161.
3. Based on investigation by the Water District 13-T watermaster and the department, plus subsequent acknowledgement by Gem Valley, Gem Valley is found to have used ground water on approximately 40 to 50 acres of land not authorized as a valid place of use under water right transfer no. 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B.
4. The director should issue a Notice of Violation instructing Gem Valley to 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 and applying it to lands not in accordance with the conditions and agreements established by water right transfer no. 5545 and water right nos. 13-02259, 13-07198C, 13-07165, 13-07261 and 13-07198B.
2. For failure to comply with the law and authorized water rights, Gem Valley shall pay a three hundred-dollar (\$300.00) civil penalty to the department. The penalty shall be paid by July 16, 2001.
3. For any future diversion of water or application of water to lands not authorized by the water rights, or by subsequent order and decision by the department, Gem Valley 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 **Consent Agreement** with the Department to remedy the violation and to assure future compliance with the laws of the State of Idaho.

DATED this 5<sup>th</sup> day of July, 2001.

  
for NORMAN C. YOUNG  
Administrator  
Water Management Division