

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE
STATE OF IDAHO

COPY

IN THE MATTER OF DIVERSION)
OF WATER BY ROXIE HOLSTEN)

NOTICE OF VIOLATION
AND CEASE AND DESIST 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 Roxie Holsten (herein referred as Holsten).

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

FINDINGS OF FACT

- 1) The Portneuf on May 16, 2001 only had sufficient water to fill a June 28, 1901 priority date.
- 2) Roxie Holsten diverts water under decreed water right 29-00130 with her priority date of 06/17/1902
- 3) In May 14, 2001 Arlin Olson watermaster of Water District 29 called the department and advised that Roxie Holsten refused to turn off their diversion of water right 29-00130. This water right is for 3.17 cfs out of Pebble Creek with a priority date of 6-17-1902.
- 4) Department personnel called Holsten and issued a verbal Cease and Desist Order. Mike Holsten, Roxie's husband advised that he would not shut off their diversion until June 1, 2001 when the power to their pump was out.
- 5) The department advised the watermaster to adjust head gates to make sure there was no water available for 1902 priority water rights and report back.
- 6) On May 21, 2001 the watermaster reported that no extra water was available for 1902 priority water rights based on the level of water behind the terminal measuring dam on the Portneuf River.
- 7) On May 22, 2001 the watermaster confirmed that Holsten was still taking water from her Pebble Creek diversions.

CONCLUSION OF LAW

1. Idaho Code 42-1701B (6)(a) states, on 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. The director should issue a Notice of Violation instructing Holsten to cease and desist from diversion and use of water under Decree 29-00130.

ORDER

IT IS HEREBY ORDERED as follows:

1. Roxie Holsten shall cease and desist diverting water under Decree 29-00130 on pebble Creek.
2. For failure to comply with the law and any authorized water rights, Holsten shall pay a \$1200 civil penalty to the department. The penalty shall be paid by June 10, 2001.
3. For any future diversion of ground water or application of ground water that is not in compliance with valid water rights, or by subsequent order and decision by the department, Holsten shall pay a civil penalty of three hundred dollars (\$300) annually per acre for each acre irrigated not in conformance with valid water rights.
4. Roxie Holsten is entitled to a **Compliance Conference** if she submits a written request for a conference to the department within (14) days of receipt of the Notice of Violation.
5. Holsten 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 25th day of May, 2001


Ronald D. Carlson
Eastern Regional Manager