



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

June 15, 1999

Round Mountain Ranch  
c/o Jeff Sessions  
PO Box 2646  
Malta, ID 83342

Mrs. Merle Jones  
HC 72 Box 2346  
Malta, ID 83342

Re: Pending Notice of Violation for Application of Water not in Conformance with a Valid Water Right

Dear Water User:

The Department received a report yesterday that you are diverting water to a pivot covering 35 acres in the NESW of Section 13, T16S, R27E. The use of this pivot on this land was the subject of a notice from the department last year that required you to cease use of the pivot. Pursuant to the Order Approving Transfer No. 4640, dated November 7, 1997, this land can only be irrigated with water from Clear Creek when water is available under right 43-00286B. The order further provides that the same land can only be irrigated from the reservoir on Round Mountain Creek under permit 43-07321 provided that 1) Clear Creek water is being simultaneously diverted to the reservoir, and 2) water from Clear Creek is being diverted by Round Mountain Ranch pursuant to water right 43-00286B as ordered by the adjudication court.

As you know, the adjudication court ordered that right 43-00286B could not be delivered (see Order Modifying Interim Administration on Clear Creek, Judge Daniel C. Hurlbutt, June 3, 1998). Given this direction, IDWR believes that the pivot in the NESW of Section 13 can not be used.

IDWR received correspondence from your attorney, Roger Ling, dated June 3, 1999 and June 7, 1999. The June 7th letter, and a portion of the June 3rd letter argued that you are entitled to several additional water rights from Clear Creek based on the adjudication court's Preliminary Injunction of May 15, 1996. However, these rights were assigned no definitive priority dates or place of use, nor did they receive any mention in the subsequent court orders of May 8 and June 3, 1998. Also, IDWR has not found from review of its records that Round Mountain Ranch or Merle Jones filed claims to the rights described in the Preliminary Injunction. We also can not find decreed rights that match those same water right descriptions. Although the adjudication court ordered that interim administration is to be based on the court's orders, including the Preliminary Injunction, as well as the Preliminary Director's Report, the Supplemental Preliminary Director's Report, and Permit No. 43-07321, we find that these orders and documents are conflicting with respect to the rights identified by Mr. Ling. IDWR therefore can not deliver these rights until further clarification is provided by the court through either an order of the court or the issuance of partial decrees. It may be helpful if you or Mr. Ling could at least

provide information about the origin of these rights.


Mr. Ling also argued in his June 3rd letter that certain parts of the IDWR Final Order Approving Transfer No. 4640, dated November 7, 1997 can not be enforced because that order has been appealed by Round Mountain Ranch. The department disagrees with this position, an appeal of an order does not stay the order. In other words, the fact that an order has been appealed does not mean that the order is automatically canceled and unenforceable. IDWR agrees with Mr. Ling's observations that IDWR did allow for irrigation of the full 266 acres under the approved transfer and permit no. 43-07321. This irrigation of the full 266 acres however was contingent on those conditions identified in paragraph one, page one of this letter. Again, since the adjudication court did not allow for delivery of right 43-00286B, then the 266 irrigated acres originally allowed under the transfer must be reduced. Specifically, the reduction should be the land under the pivot.

Idaho Code §42-351 states:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

This letter is notification that the Department will issue a Notice of Violation requiring you to cease and desist from using the pivot and seeking civil penalties unless you advise us of the rights that are being used or unless the diversion ceases. Please respond to IDWR regarding your use of the pivot in the NESW of Section 13 by June 18, 1999. As I plan to be working in the field later this week, I suggest you contact the regional office concerning this matter.

Sincerely,

  
Tim Luke  
Water Distribution

Cc. Dave Sundberg, Watermaster  
Roger Ling  
Harold and Ray Jones  
Allen Merritt, Southern Region

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April 1999

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