



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

RECEIVED

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

October 22, 2007

OCT 26 2007

DEPARTMENT OF
WATER RESOURCES

CERTIFIED

LOY PEHRSON AND BYRON PEHRSON
RT 1 BOX 48
DARLINGTON, ID 83255

RE: DIVERSIONS FROM BIG LOST RIVER NEAR THE LOWER BURNETT

Dear Mr. Pehrson:

At the request of the Water District 34 Watermaster, Nick Miller of the Idaho Department of Water Resources (IDWR) and the Watermaster visited the Low Burnett diversion on Wednesday September 26, 2007. The purpose of the visit was to address the Watermaster's concerns that no valid water right authorizes diversion of water at the "Pehrson diversion", which is located approximately 200-feet upstream of the Low Burnett. The Low Burnett and Pehrson ditch headings are both located in the NW ¼ of the NE ¼ of Section 24, Township 06N, Range 25E, B.M.

IDWR staff installed identification tags on both the Low Burnett and Pehrson diversions, collected location information using a global positioning system unit, and captured digital photographs of the area. The information collected during the site visit, as well as a review of available aerial photography and IDWR water right records indicates that the Pehrson diversion and ditch was installed subsequent to the start of the Snake River Basin Adjudication (SRBA). It appears the water rights currently diverted at the Pehrson diversion were historically diverted at the Low Burnett and were decreed as such.

IDWR Records indicate eleven water rights held in your name are authorized to divert from the Low Burnett: 34-119C, 34-130, 34-131A, 34-132A, 34-195A, 34-196A, 34-197A, 34-360A, 34-605A, 34-776, 34-13745. Each of these water rights bears a condition of approval that reads:

"Water is delivered through the Beck-McGowan, 3 IN 1, Harris-Vaught, Burnett and Lower Burnett ditches."

IDWR records indicate no transfer has been filed to change the point of diversion for these water rights from the Low Burnett or to add the Pehrson as a legal point of diversion. Therefore, according to IDWR records, you do not have a valid water right or permit authorizing you to divert water at the Pehrson diversion. This constitutes a violation of Idaho Code, Section 42-351, specifically diversion of water not in conformance with a valid water right. That statute provides the director discretion to issue a written Notice of Violation and Cease and Desist

Order. Please note that issuance of a Notice of Violation can result in monetary civil penalties pursuant to Section 42-1701B, Idaho Code. Additionally, IDWR observed and photographed evidence of recent use of heavy equipment in the stream channel at the Pehrson diversion. The Water District No. 34 Watermaster confirmed that the earthen and rock check structure at the Pehrson Diversion was raised recently. No water right authorizes diversion of water at that location and no permit was issued for the instream work. Therefore, the instream work is in violation of the Stream Protection Act as provided for under Idaho Code. Specifically, the work and constitutes a violation of §42-3803, alteration of a stream channel without a permit. Please note that IDWR has the discretion to pursue an administrative enforcement action that may result in monetary civil penalties pursuant to Section 42-1701B, Idaho Code.

Please contact our office within fourteen (14) days from the date of this letter to discuss these findings and determine a remedy for the unauthorized diversion and Stream Protection Act violation. You may contact Tom Bassista directly at 208-525-7161 regarding this matter.

Respectfully,

A handwritten signature in cursive script that reads "Lyle Swank".

Lyle Swank, P.E.
Manager, Eastern Regional Office

cc:

MALLNEE PEHRSON WREDE – 2112 WAHLQUIST DR, IDAHO FALLS, ID 83401
BOB SHAFFER – WD34 WATER MASTER - PO BOX 53, MACKAY, ID 83251-0053
BIG LOST RIVER IRRIGATION DISTRICT, 101 S MAIN AVE, MACKAY, ID 83251
IDWR STATE OFFICE, ATTN: NICK MILLER, 322 E. FRONT ST, BOISE, ID 83720