



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

December 12, 2007

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

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:

This letter is a follow up to a letter written by the Idaho Department of Water Resources (IDWR) on October 22, 2007 indicating that no water right authorizes diversion of water at the Pehrson Ditch.

Two diversions are located in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East. The distinction between the two ditches is not reflected in any of the 25 rights water rights (held by you, the BLRID, or others) that divert from this general location. In fact, all but one bears a condition naming the "Lower Burnett" as a point of diversion. That two ditches exist in the same ten-acre tract and are referred to by the same name certainly adds complexity of the discussion. In this letter, the diversion from which you take water is referred to as the "Pehrson Ditch", and the diversion approximately 200 feet downstream of the Pehrson Ditch is referred to as the "Low Burnett". This nomenclature is consistent with that used on delivery documentation produced by the Water District No. 34 Watermaster and the Big Lost River Irrigation District (BLRID).

You assert that the ditch delivering water to your property (the Pehrson Ditch) was constructed prior to commencement of the Snake River Basin Adjudication (SRBA). Historical aerial photography depicts a diversion at this location at least as early as 1992. However, a point of diversion consistent with the Pehrson Ditch is not described on either the partial decrees or subsequent transfers to your water rights. Your water rights describe a point of diversion in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East, but no diversion is depicted at that location on aerial photographs taken during the period your rights your rights were recommended and partially decreed (1987-2001). The aerial photography suggests, but does not confirm, that the legal description for this point of diversion may have been incorrectly claimed in the SRBA.

In addition to your water use, natural flow and BLRID storage water is diverted at the Low Burnett and the Pehrson Ditch for John and Barbara Beller, Max and Cheryl Bingham, and Jack and Jean McAfee. Each of these users' water rights are similar to your rights in that they describe a point of diversion (or redirection of storage water) in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East, and do not describe a point of diversion in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East. Regardless of the circumstance that led to the description on the decree, diversion of water to the Pehrson or Low Burnett Ditches does not conform to the water rights as decreed.

IDWR recognizes that water has been diverted from the Low Burnett and Pehrson Ditches for a number of years and that this situation may not be substantially different from what was occurring at the commencement of the SRBA. Nevertheless, it is in the best interest of everyone involved that the water rights and the water usage conform to one another. If left unaddressed, future controversy is certain. This is especially true in this situation, given the number of water rights involved, the apparent use of the name "Low Burnett" to refer to two different ditches, as well as the recent controversy over your diversion structure.

IDWR will not immediately pursue enforcement actions, but you are required to take all necessary actions to bring your water rights and actual water use into conformity.

The point of diversion description on the partial decrees may only be addressed through an application for transfer or by the SRBA court issuing an amended partial decree. Please notify IDWR of your plans to address this issue. Upon notification of your plans, IDWR, if appropriate, will add the point of diversion to the IDWR accounting program and the IDWR Internet Data Entry Application.

If, at the start of the 2008 irrigation season, you begin diverting from the Pehrson Ditch and have not initiated efforts to address this issue, IDWR will pursue enforcement actions. Diversion of water not in conformance with a valid water right constitutes a violation of Idaho Code, Section 42-351. That statute provides the director discretion to issue a written Notice of Violation and Cease and Desist Order that can result in monetary civil penalties pursuant to Section 42-1701B, Idaho Code.

If you have any questions concerning this matter, please contact me at (208) 287-4956. Please note that a similar letter is being sent to the other water right holders that divert from the Low Burnett.

Respectfully,



Nick Miller  
Water Distribution Section  
IDWR

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 EASTERN REGION

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December 12, 2007

JOHN AND BARBARA BELLER  
3008 WILD ROSE  
IDAHO FALLS, ID 83402

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

**RE: DIVERSIONS FROM BIG LOST RIVER NEAR THE LOWER BURNETT**

Dear Mr. and Mrs. Beller:

Two water rights held in your names (34-282B and 34-856H) describe a point of diversion that is not consistent with the location at which the Water District 34 Watermaster delivers your water. You are required to take all necessary actions to bring your water rights and actual water use into conformity.

Water users that have been diverting water or rediverting stored water at the Low Burnett Ditch hold water rights that bear a condition naming the Lower Burnett as a point of diversion. However, these rights each describe a point of diversion (or rediversion of storage water) in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NW tract), and do not describe a point of diversion in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NE tract).

Aerial photographs of the area taken between 1987 and 2004 do not depict a diversion in the NW tract, but the Pehrson and Low Burnett ditches are depicted in the NE tract at least as early as 1992. This suggests that water rights describing a point of diversion in the NW tract may have been claimed incorrectly. Regardless of the circumstance that led to these rights being decreed as they were, diversion of water to the Pehrson or Low Burnett Ditches does not conform with the water rights as decreed.

IDWR recognizes that the current diversion of water from the Low Burnett and Pehrson Ditches has occurred for a number of years and may not be substantially different from what was occurring at the commencement of the SRBA. Nevertheless, it is in the best interest of everyone involved that the water rights and the water usage conform to one another. As such, IDWR will not immediately pursue enforcement actions, but you are required to bring your water rights and actual water use into conformity.

The point of diversion description on the partial decrees may only be changed through an application for transfer or by the SRBA court issuing an amended partial decree.

If, at the start of the 2008 irrigation season, you begin diverting from the Low Burnett and have not initiated efforts to address this issue, IDWR will pursue enforcement actions. Diversion of water not in conformance with a valid water right constitutes a violation of Idaho Code, Section 42-351. That statute provides the director discretion to issue a written Notice of Violation and Cease and Desist Order that can result in monetary civil penalties pursuant to Section 42-1701B, Idaho Code.

John and Barbara Beller  
December 12, 2007  
Page 2 of 2

If you have any questions concerning this matter, please contact me at (208) 287-4956.  
Please note that a similar letter is being sent to the other water right holders that divert from the  
Low Burnett.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nick Miller', with a large, stylized loop at the end.

Nick Miller  
Water Distribution Section  
IDWR

cc:  
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 EASTERN REGION

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December 12, 2007

JACK AND JEAN McAFFEE  
PO BOX 618  
MOORE, ID 83255

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

**RE: DIVERSIONS FROM BIG LOST RIVER NEAR THE LOWER BURNETT**

Dear Mr. and Mrs. McAfee:

Three water rights held in your names (34-491, 34-549D, and 34-64A) describe a point of diversion that is not consistent with the location at which the Water District 34 Watermaster delivers your water. You are required to take all necessary actions to bring your water rights and actual water use into conformity.

Water users that have been diverting water or rediverting stored water at the Low Burnett Ditch hold water rights that bear a condition naming the Lower Burnett as a point of diversion. However, these rights each describe a point of diversion (or rediversion of storage water) in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NW tract), and do not describe a point of diversion in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NE tract).

Aerial photographs of the area taken between 1987 and 2004 do not depict a diversion in the NW tract, but the Pehrson and Low Burnett ditches are depicted in the NE tract at least as early as 1992. This suggests that water rights describing a point of diversion in the NW tract may have been claimed incorrectly. Regardless of the circumstance that led to these rights being decreed as they were, diversion of water to the Pehrson or Low Burnett Ditches does not conform with the water rights as decreed.

IDWR recognizes that the current diversion of water from the Low Burnett and Pehrson Ditches has occurred for a number of years and may not be substantially different from what was occurring at the commencement of the SRBA. Nevertheless, it is in the best interest of everyone involved that the water rights and the water usage conform to one another. As such, IDWR will not immediately pursue enforcement actions, but you are required to bring your water rights and actual water use into conformity.

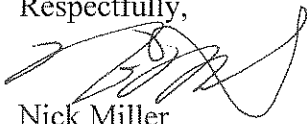
The point of diversion description on the partial decrees may only be changed through an application for transfer or by the SRBA court issuing an amended partial decree.

If, at the start of the 2008 irrigation season, you begin diverting from the Low Burnett and have not initiated efforts to address this issue, IDWR will pursue enforcement actions. Diversion of water not in conformance with a valid water right constitutes a violation of Idaho Code, Section 42-351. That statute provides the director discretion to issue a written Notice of Violation and Cease and Desist Order that can result in monetary civil penalties pursuant to Section 42-1701B, Idaho Code.

Jack and Jean McAfee  
December 12, 2007  
Page 2 of 2

If you have any questions concerning this matter, please contact me at (208) 287-4956.  
Please note that a similar letter is being sent to the other water right holders that divert from the  
Low Burnett.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nick Miller', with a large, sweeping flourish extending to the right.

Nick Miller  
Water Distribution Section  
IDWR

cc:  
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 EASTERN REGION

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December 12, 2007

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

CHERYL AND MAX BINGHAM  
3861 N HWY 93  
LESLIE, ID 83255

### RE: DIVERSIONS FROM BIG LOST RIVER NEAR THE LOWER BURNETT

Dear Mr. and Mrs. Bingham:

Two water rights held in your names (34-282C and 34-452E) describe a point of diversion that is not consistent with the location at which the Water District 34 Watermaster delivers your water. You are required to take all necessary actions to bring your water rights and actual water use into conformity.

Water users that have been diverting water or rediverting stored water at the Low Burnett Ditch hold water rights that bear a condition naming the Lower Burnett as a point of diversion. However, these rights each describe a point of diversion (or rediversion of storage water) in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NW tract), and do not describe a point of diversion in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NE tract).

Aerial photographs of the area taken between 1987 and 2004 do not depict a diversion in the NW tract, but the Pehrson and Low Burnett ditches are depicted in the NE tract at least as early as 1992. This suggests that water rights describing a point of diversion in the NW tract may have been claimed incorrectly. Regardless of the circumstance that led to these rights being decreed as they were, diversion of water to the Pehrson or Low Burnett Ditches does not conform with the water rights as decreed.

IDWR recognizes that the current diversion of water from the Low Burnett and Pehrson Ditches has occurred for a number of years and may not be substantially different from what was occurring at the commencement of the SRBA. Nevertheless, it is in the best interest of everyone involved that the water rights and the water usage conform to one another. As such, IDWR will not immediately pursue enforcement actions, but you are required to bring your water rights and actual water use into conformity.

The point of diversion description on the partial decrees may only be changed through an application for transfer or by the SRBA court issuing an amended partial decree.

If, at the start of the 2008 irrigation season, you begin diverting from the Low Burnett and have not initiated efforts to address this issue, IDWR will pursue enforcement actions. Diversion of water not in conformance with a valid water right constitutes a violation of Idaho Code, Section 42-351. That statute provides the director discretion to issue a written Notice of Violation and Cease and Desist Order that can result in monetary civil penalties pursuant to Section 42-1701B, Idaho Code.

Cheryl and Max Bingham

December 12, 2007

Page 2 of 2

If you have any questions concerning this matter, please contact me at (208) 287-4956. Please note that a similar letter is being sent to the other water right holders that divert from the Low Burnett.

Respectfully,

A handwritten signature in black ink, appearing to read "Nick Miller", with a stylized flourish at the end.

Nick Miller  
Water Distribution Section  
IDWR

cc:

BOB SHAFFER – WD34 WATER MASTER - PO BOX 53, MACKAY, ID 83251-0053  
BIG LOST RIVER IRRIGATION DISTRICT – 101 S MAIN AVE MACKAY, ID 83251  
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C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

BIG LOST RIVER IRRIGATION DISTRICT  
C/O THE BOARD OF DIRECTORS  
101 S MAIN AVE  
MACKAY, ID 83251

### RE: DIVERSIONS FROM BIG LOST RIVER NEAR THE LOWER BURNETT

To the Board of Directors:

Storage water impounded under water rights held by the Big Lost River Irrigation District (BLRID) or as rotation credit, is rediverted to two ditches located in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East. The Water District 34 Watermaster indicated these two points are referred to as the "Pehrson Ditch" (the upper diversion), and the "Low Burnett" (the diversion approximately 200 feet downstream of the Pehrson Ditch). This letter provides notice to the Big Lost River Irrigation District (BLRID) that no water rights authorize diversion at the Pehrson or Low Burnett Ditches. You are required to take all necessary actions to bring your water rights and actual water use into conformity.

The BLRID and the other users that have been diverting water at the Low Burnett and Pehrson Ditch hold water rights that bear a condition naming the Lower Burnett as a point of diversion. However, these rights each describe a point of diversion (or rediversion of storage water) in the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NW tract), and do not describe a point of diversion in the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 24, Township 6 North, Range 25 East (hereafter referred to as the NE tract).

Aerial photographs of the area taken between 1987 and 2004 do not depict a diversion in the NW tract as described on the water rights, but the Pehrson and Low Burnett ditches are depicted in the NE tract at least as early as 1992. This suggests that water rights describing a point of diversion in the NW tract may have been claimed incorrectly. Regardless of the circumstance that led to the description on the decree, diversion of water to the Pehrson or Low Burnett Ditches does not conform to the water rights as decreed.

IDWR recognizes that water has been diverted from the Low Burnett and Pehrson Ditches for a number of years and that this situation may not be substantially different from what was occurring at the commencement of the SRBA. Nevertheless, it is in the best interest of everyone involved that the water rights and the water usage conform to one another. As such, IDWR will not immediately pursue enforcement actions, but you are required to bring your water rights and actual water use into conformity.

The point of diversion description on the partial decrees may only be addressed through an application for transfer or by the SRBA court issuing an amended partial decree.

Big Lost River Irrigation District

December 12, 2007

Page 2 of 2

If, by the start of the 2008 irrigation season, you have not initiated efforts to address this issue, IDWR will pursue enforcement actions. Diversion of water not in conformance with a valid water right constitutes a violation of Idaho Code, Section 42-351. That statute provides the director discretion to issue a written Notice of Violation and Cease and Desist Order that can result in monetary civil penalties pursuant to Section 42-1701B, Idaho Code.

If you have any questions concerning this matter, please contact me at (208) 287-4956. Please note that a similar letter is being sent to the other water right holders that divert from the Low Burnett.

Respectfully,



Nick Miller  
Water Distribution Section  
IDWR

cc:  
BOB SHAFFER – WD34 WATER MASTER - PO BOX 53, MACKAY, ID 83251-0053  
IDWR EASTERN REGION

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