



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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December 23, 2004

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Re: Jim Dowton

Gentlemen:

Attached is aerial imagery of the Pahsimeroi Valley, the Pahsimeroi River, and the channel connected to the Pahsimeroi River located on the Jim Dowton property. The pond located on the channel is visible in the 2004 imagery, but is not visible on the 1992 and 2003 imagery. The channel is more visible in the 2003 and 2004 imagery than in the 1992 imagery. Some of the differences in clarity may depend on the resolution of the image, the time of year it was taken, and the quantity of water flowing in the Pahsimeroi River.

The 1992 aerial photographs Jim Speck emailed on December 6, 2004 are the clearest images of the Dowton channel and any impoundments on the channel. The 1992 photograph does not depict a continuous channel. A pond is not visible at the location of the impoundment created by the construction of a road crossing, a culvert, and an outlet control structure.

IDWR staff discovered that the Consolidated Farm Services Agency (CFSA) has annually taken aerial photographs of the Dowton property and other properties within the area. The photographs were developed into slides. CFSA will not release the slides to IDWR, however, without the consent of the landowner. If Dowton or Coleman can access the photographs, perhaps they will better depict any changes in the channel over a period of years.

Based on the information before IDWR, it appears that Dowton excavated and constructed in the Dowton Channel without a stream channel alteration permit in violation of Idaho Code § 42-3803 and Idaho Code § 42-3809. In addition, as we discussed at the prehearing conference, Dowton also irrigated land located in the SE ¼ of Section 17, T15N, R21E that is not described by a recorded water right. I do not have sufficient evidence to determine whether Dowton artificially placed the material in the Pahsimeroi River at the location of the channel division.

Consistent with discussions at the prehearing conference, IDWR has determined that the Dowton Channel is a natural channel of the Pahsimeroi River. The obstruction at the mouth of the Dowton Channel was constructed many years ago to prevent flooding of the Dowton

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property. Although it appeared Dowton was using the headworks to divert Pahsimeroi River water into the Dowton Channel without a valid water right because the headworks to the Dowton Channel were open, Dowton was not diverting water illegally. As a result, Dowton was not required to cease and desist diversion as required by the order issued on or about June 22, 2004 (refer to letter dated June 21, 2004). The order should be rescinded.

A notice of violation should be issued for Dowton's construction without a stream channel alteration permit and irrigation of land without a valid recorded water right. A monetary penalty will be computed based on the significance of the stream channel alteration and the number of acres irrigated without a water right. As stated at the prehearing conference, if Dowton agrees in a written compliance agreement to (1) restore the alteration and (2) cease irrigating the unauthorized lands, and (3) obtain a water right for the acres irrigated without a recorded water right prior to resuming irrigation, IDWR will suspend any civil penalties. If Dowton completes the agreed-upon activities to the satisfaction of IDWR, IDWR will excuse the penalties.

Additionally, in a letter to me dated December 6, 2004, Jim Speck requested inspection access by Steve Fisher. IDWR does not have the authority to grant access to the lands of another.

Sincerely,

Gary Spackman

Enclosures

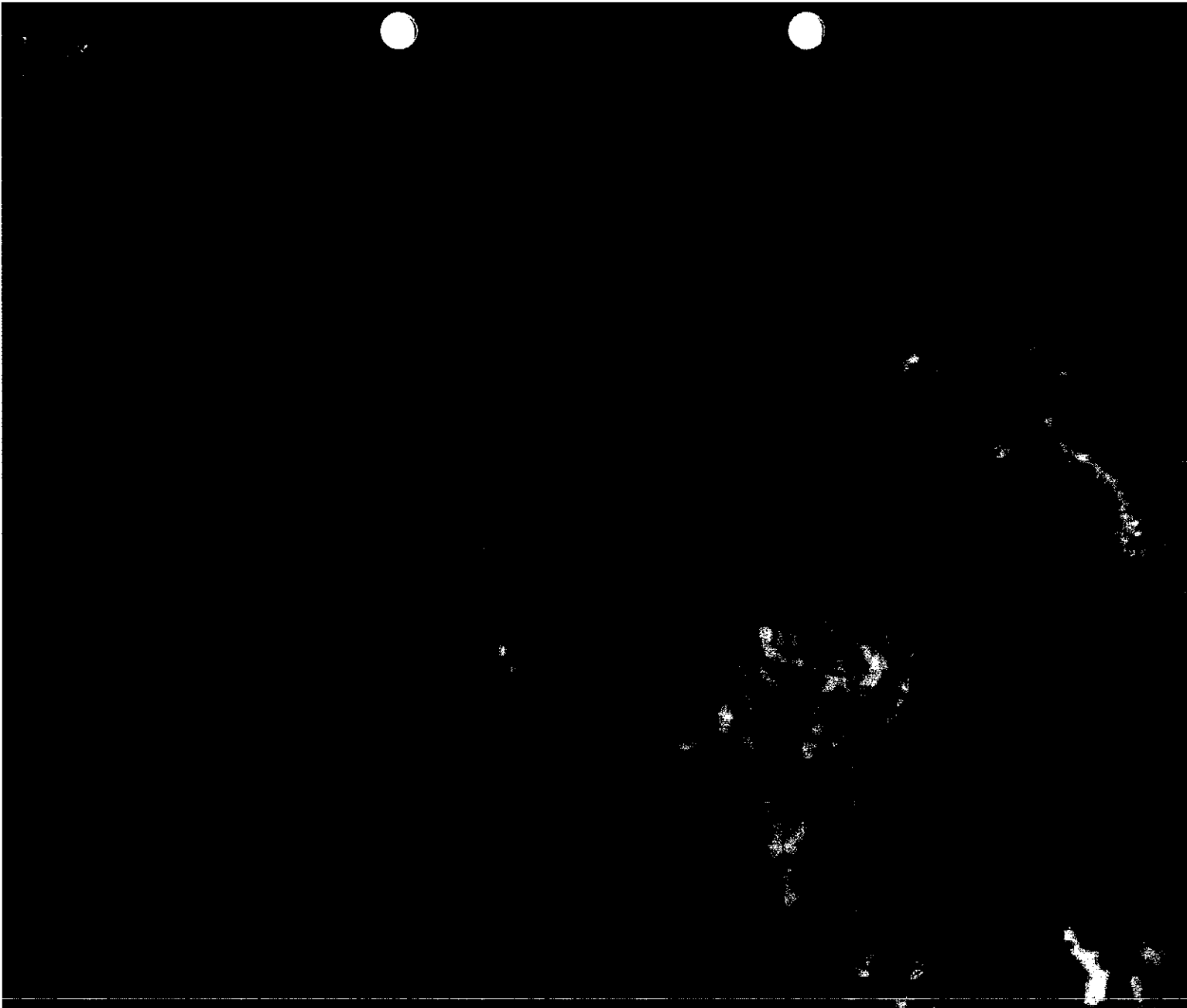
cc. Bob Foster  
Terry Blau  
Tom Curet  
Representative Lenore Barrett  
Eastern Region



1992



2003  
7/14/2003



2004