



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

June 19, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

Jordan Smith
807 Main St
Salmon, ID 83467

Re: Berend Friehe Water Right 73-151 and Unauthorized Use

Dear Mr. Smith,

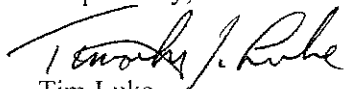
The Department is in receipt of your letter dated May 18, 2006 regarding the point of diversion change for Mr. Friehe's water right 73-151. You state in this letter that an application for transfer to change the point of diversion was "inadvertently" not filed with the Department until the date of your letter, despite having been notified of the issue nearly two years ago. Your letter asks for a response from the Department with regard to allowing your client to continue irrigating "during the pendency of the application process". You also state that there is no real injury in this case at the time because of high water and the fact that all other water rights are satisfied.

After receiving your letter, I discussed this matter with the watermaster, Ted O'Neal, and Bob Foster of our Salmon Field Office. Mr. Foster confirmed that the transfer application had not been filed with the Department until about May 18, 2006. Mr. Foster also confirmed with me on May 11, 2006 that he spoke to Mr. Friehe's farm operator, Shaun Carter, and advised Mr. Carter to leave the pivot off until IDWR could confirm whether a transfer application had been filed. I spoke with Mr. O'Neal within a few days of your May 18th letter and we agreed that the Friehe right could be turned on during high water. I asked Mr. O'Neal to convey this message to the operator. It is my understanding that Mr. Carter turned on the pivot before Mr. O'Neal contacted him and without any further consent or direction from the Department. I believe Mr. Carter's actions occurred before the Department and the watermaster really had a chance to respond to your May 18th letter.

By copy of this letter, the Department is advising the watermaster, and notifying you and Mr. Friehe, that the Friehe water right 73-151 shall be curtailed as soon as any junior priority water rights are cut on the Pahsimeroi River. The Department directs the watermaster to allow continued diversion of this right only when other all water rights on the Pahsimeroi River are satisfied. The Department cannot authorize use of the right at the new point of diversion "during the pendency of the application process" except at times when the previous stated condition is met. This direction is effective immediately.

Please contact me directly at 287-4959 if you have questions concerning this matter.

Respectfully,



Tim Luke

Cc: Berend Friehe
Ted O'Neal, Watermaster WD73
Bob Foster, IDWR Salmon Field Office
IDWR Eastern Region