



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

November 21, 1996

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

George Lemmon  
Watermaster, District 36A  
1050 East 2727 South  
Hagerman, ID 83332

Re: Diversion of Water Without a Valid Water Right

Dear George:

Last spring, the Department received several calls for delivery of water from Aqua Life, Inc. Letters were sent to Robert Tupper, Rangen, Inc., Don McFadden (Billingsley Creek Ranch), John W. Jones, George Lemmon, Buckeye Farms, and Big Spring Waterusers informing them that the Department would not curtail use of water for fish propagation when the use is incidental to an irrigation use, but would curtail diversion of rights bearing dates of priority later than the water rights of Aqua Life, as described in the attached summary, after November 15, 1996, the close of the irrigation season. You were sent a notice because you have diverted water in the past for fish propagation in the non-irrigation season without a water right.

This letter instructs you to deliver the water rights owned by Aqua Life, described in the attached summary, in their order of priority. I specifically refer you to my letter dated April 25, 1996 which states:

IDWR does not intend to curtail, or direct the water district watermaster to curtail any junior fish propagation use or other non-irrigation use where the diversion is non-consumptive and returns to Billingsley Creek at a point upstream of Aqua Life's point of diversion. IDWR also does not intend to curtail, or direct the watermaster to curtail any fish propagation use while it is used in conjunction with diversion for irrigation. . . . [A]t the end of the irrigation season, IDWR will pursue the curtailment of non-irrigation rights which are subsequent to the rights held by Aqua Life.

In regulating diversions, do not curtail any nonconsumptive water rights that bear a date of priority later than the priority dates of the rights owned by Aqua Life if the water diverted returns to the source upstream of the Aqua Life points of diversion. This instruction could change, however, upon a showing that the nonconsumptive use is significantly degrading the quality of water for Aqua Life's use.

George Lemmon

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Your use of water for fish propagation is not authorized by a water right and diversion should cease. Robert Tupper's diversion should be limited to 0.6 cfs. The Department has not received proof that Tupper is entitled to any additional water during the non-irrigation season. This may be subject to further review in the future. Tim Luke represents that Tupper consistently diverted more water than he is entitled to during the summer. Please carefully measure his water when the adjustment is made.

If waterusers whose rights are subject to curtailment are raising fish in their raceways, they should be told that they will have until December 6, 1996, to either remove their fish prior to regulation or to make other arrangements satisfactory to the Department.

If you have questions, please call.

Sincerely,



Gary Spackman

c. Robert Tupper  
Ken Ellis  
Big Spring Waterusers Association  
Don McFadden  
Rangen, Inc.  
John W. Jones  
Buckeye Farms  
City of Hagerman  
Southern Region  
Tim Luke