



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

August 17, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Webster Farm, LLC
4323 E Glendale Rd
Preston, ID 83263

Certified Mail

Re: Potential Unauthorized Water Use

Dear Gentlemen:

The Idaho Department of Water Resources (Department or IDWR) has completed an inventory of diversions and review of water rights in the Worm Creek drainage this summer. Our investigation and review indicates that you are diverting water from Worm Creek at a point of diversion location that is different from the point of diversion location authorized by your water rights. Specifically, the point of diversion authorized by your Worm Creek water rights 13-299 and 13-300, is the Lamont-Johnson Ditch located in the NW/4SE1/4 (NWSE) of Section 10, Township 15 South (T15S) and Range 40 East (R40E). Our inventory of diversions shows that you divert the above referenced water rights from a point further upstream on Worm Creek located in the SWSE of Section 2, T15S, R40E. While conducting a diversion inventory with a representative from Preston Whitney Irrigation Company (PWIC) on May 26, 2010, I had the opportunity to briefly meet with Mr. Dennis Webster who confirmed that the current diversion point for rights 13-299 and 13-300 is located at the diversion point further upstream in Section 2 just below the Mink Creek injection flume, not the Lamont-Johnson Ditch.

In addition to the water right point of diversion discrepancy, the Department observed an irrigation center pivot and wheel line on cultivated lands located north of Glendale Reservoir within Sections 4 and 9 of T15S, R40E as shown on the enclosed map. Aerial imagery from 2009 on file at IDWR indicates that the land under these irrigation systems may have been irrigated in 2009 and/or 2010. A search of water rights on file at the Department shows that there are no valid water rights appurtenant to these lands. The Department finds that the potential total number of irrigated lands in Sections 4 and 9, plus those lands irrigated in Section 10 under rights 13-299 and 13-300, may exceed the total 143 acres authorized by rights 13-299 and 13-300.

The Department has also learned that you are diverting Mink Creek water that is injected to Worm Creek from your point of diversion in Section 2 just below the Mink Creek injection flume. The Mink Creek water right that is injected to Mink Creek is right 13-7747, owned by the Preston Riverdale and Mink Creek Company. We note that the place of use service area for this right does not include your lands above the Glendale Reservoir in Sections 4, 9 or 10 of T15S, R40E. IDWR has no record of any water rights or water right exchanges that authorize your diversion and use of water from Mink Creek.

IDWR notes that the PWIC has included certain lands that you own in Sections 3, 4, 9 and 10 in its irrigated service area that is the subject of a pending PWIC water rights transfer application. The irrigated service area information provided by PWIC may provide additional

evidence of irrigation in Sections 3, 4 and 9. Although we understand that you are a PWIC shareholder, we are not clear how the lands in Sections 3, 4 and 9 may be irrigated with PWIC shares. Moreover, we are not certain how the lands in Section 3, 4 and 9, and even Section 10 may be included in the PWIC service area when those lands were not included in PWIC's place of use service area described in the Worm Creek drainage decree that was issued in 1981.

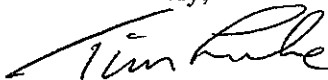
I request your cooperation to resolve this matter by:

- reviewing the attached map and contacting our office to verify your ownership status of the parcels identified on the map;
- identifying what lands are irrigated and water right or rights cover your development if our records are not correct;
- cease further diversion of water to the identified parcels if you do not have water rights;
- and/or obtain a valid water right for your irrigation development.

Please respond to our office within then (10) days of the date of this letter as to the status of the lands identified in the attached map. Please note that diversion of water in Idaho without valid water rights, or use of water not in conformance with valid water rights, is illegal pursuant to §42-351, Idaho Code and subject to civil penalties of up to \$300 per acre of land irrigated. Please further note that any unauthorized use of water for irrigation in 2009 or 2010 may be cause for the Department to issue a notice of violation and cease and desist order.

Please contact me directly at 208-287-4959 if you have questions or need assistance regarding this matter.

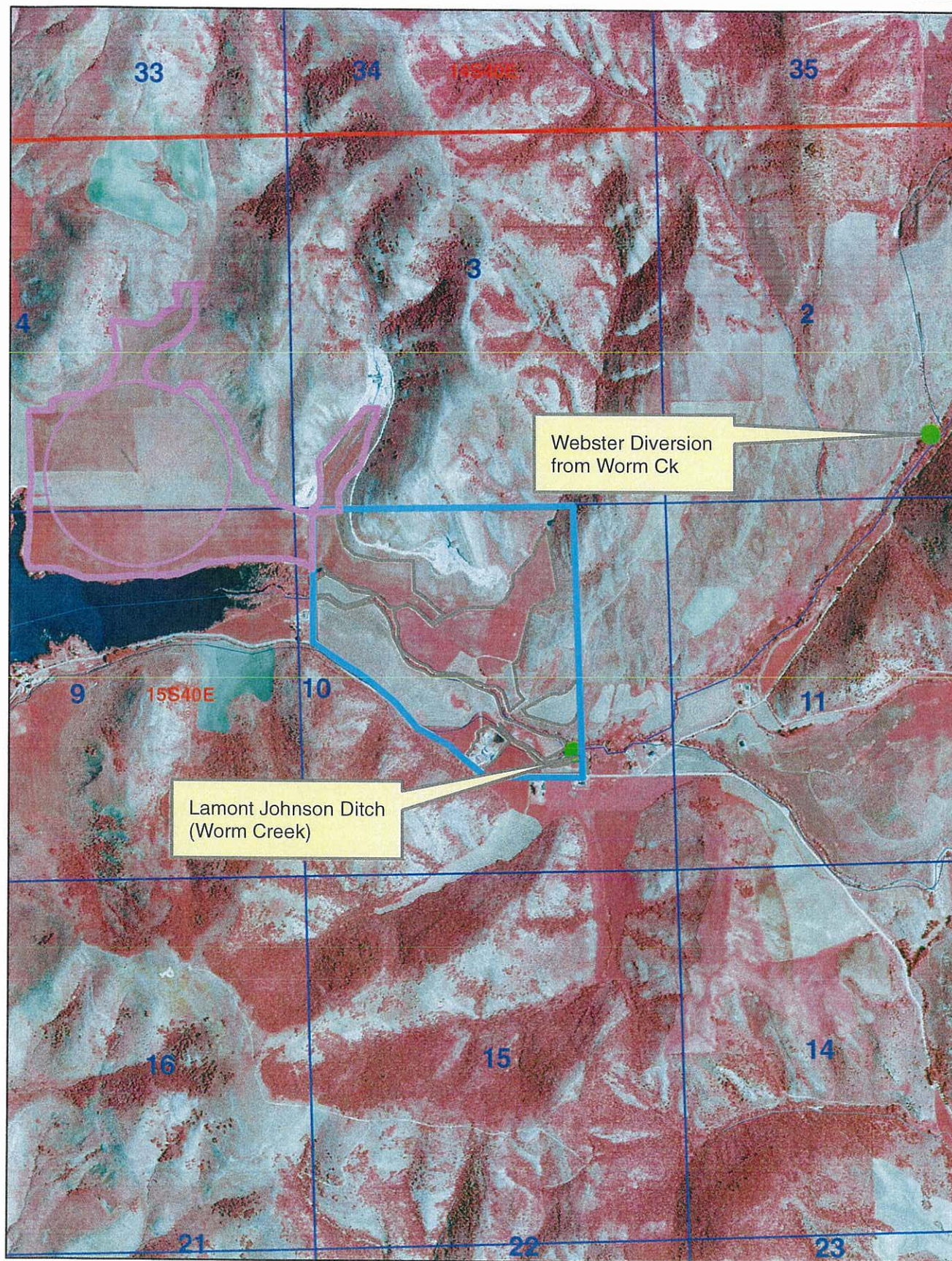
Sincerely,



Tim Luke
Water Distribution Section

Enclosure: Map of Potential Irrigated Lands without Water Rights and Irrigated Place of Use for Water Rights 13-299 & 13-300

CC: Lyle Porter, Preston Whitney Irrigation Company
Rob Harris, Attorney, Preston Whitney Irrigation Company
Preston Riverdale and Mink Creek Company
Scott Campbell, Attorney for Spring Creek Water Users
Troy Foster, Watermaster, Water District No. 13-A
James Ceffalo, IDWR Eastern Region
John Homan, Idaho Deputy Attorney General



Webster Diversion
from Worm Ck

Lamont Johnson Ditch
(Worm Creek)

Water District 13- A **Cub River & Worm Creek**

Legend

- Township/Range
- Sections
- Water Rights 13-299 & 13-300 place of use
- Potential Irrigated area without water rights



0 0.3 0.6 Mile