



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 18, 2010

Worm Creek Water Users Near Glendale Reservoir

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 may be diverting water from Worm Creek for irrigation use without a valid water right or that you are using a valid water right from Work Creek at a location that is not authorized by the right.

Water right records on file at the Department show that water right no. 13-302 authorizes the irrigation of 21 acres within the locations identified on the enclosed map and water right proof report. The water right is listed as being owned by Vernon Nelson although current Franklin County tax lot records do not list Mr. Nelson as the owner of any land within the authorized water right place of use. The point of diversion for water right 13-302 is the heading of the Lamont Johnson Ditch diverted from Worm Creek about one mile upstream of the Glendale Reservoir. Based on inspection of lands in 2010 described by water right 13-302, it appears that some of the land identified by the right is irrigated and some of the land may not be irrigated. However, other lands not included in the water right and located between the reservoir and Glendale Road appeared to be irrigated using water from the Lamont Johnson Ditch. A search of water rights on file at the Department shows that there are no valid water rights appurtenant to these other lands located between the reservoir and Glendale Road, and that the potential total number of irrigated acres in this area may exceed the total 21 acres authorized by water right 13-302.

Also shown on the enclosed map are locations of "irrigated lands" included in the Preston Whitney Irrigation Company (PWIC) water rights place of use service area as per a pending PWIC water rights transfer application filed with IDWR. The Department understands that most of the individuals receiving this notice may be PWIC shareholders who are assessed for delivery of water diverted to the Lamont Johnson Ditch pursuant to PWIC water rights from either Worm Creek or the Cub River. Although you may receive delivery of water from PWIC, it is important to realize that your lands are not included in PWIC's water right 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:

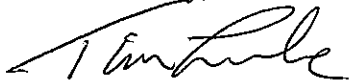
- reviewing the attached map and contacting our office to verify your ownership status of any parcels identified on the map;
- identifying what lands are irrigated and what water right or rights cover your development if our records are not correct;

- 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, including filing of any necessary water right ownership change for right 13-302 and/or filing of a water right transfer to change and/or split the place of use location of water right 13-302.

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 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,

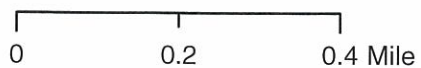


Tim Luke
Water Distribution Section

Enclosure: *a) Service list of land owners or water users receiving this notice;*
b) Map of potential irrigated lands without water rights; irrigated place of use for water right 13-302, and PWIC irrigation service area identified in PWIC water right transfer;
c) Water Right Proof Report: 13-302

CC: Lyle Porter, Preston Whitney Irrigation Company
Rob Harris, Attorney, Preston Whitney Irrigation 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

Water District 13- A Cub River & Worm Creek



Legend

-  Township/Range
  Water Right 13-302 place of use

 Sections
  Potential Irrigated area without water rights

 QQ

 PWIC Irrigated Acres

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-302

WATER RIGHT NUMBER: 13-302

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	VERN NELSON 295 N 1ST E PRESTON, ID 83263
Current Owner	VERDA O NELSON 295 N 1ST E PRESTON, ID 83263

Priority Date: 04/01/1896

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
WORM CREEK	CUB RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	0.420 CFS	74.00 AF
	<u>Total Diversion:</u>	0.420 CFS	74.00 AF

Location of Point(s) of Diversion

WORM CREEK	NW1/4SE1/4	Sec. 10, Twp 15S, Rge 40E, B.M.
FRANKLIN County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	40E	8													6.0				6.0
15S	40E	9			1.0	11.0			3.0										15.0

Total Acres: 21

Conditions of Approval:Remarks:Comments:Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-302

Licensed Date:
Decreed Date: 5/21/1981
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant: Margurett D Ainscough, et al
Decree Plaintiff: State of Idaho
Civil Case Number: 3236
Judicial District: Sixth District
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:

LYLE PORTER
PRESTON WHITNEY IRRIG CO
32 S 1 E
PRESTON ID 83263

ROB HARRIS
HOLDEN KIDWELL HAHN
PO BOX 50130
IDAHO FALLS ID 83405

SCOTT CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701-0829

TROY FOSTER WATERMASTER
WATER DISTRIC #13-A
2063 E 1600 S
PRESTON ID 83263

JAMES CEFFALO
IDWR EASTERN

JOHN HOMAN
IDWR STATE

DAVID M JOHNSON
3333 E GLENDALE RD
PO BOX 455
PRESTON ID 83263

DAVID & MELBA DUNN
7870 S 2450 E
PRESTON ID 83263

LARRY & LADAWN HANSEN
3175 E GLENDALE RD
PRESTON ID 83263

MURRY NICHOLS
140 N 100 W
PRESTON ID 83263

MARK WAYNE OWEN
1352 N 2200 E
PRESTON ID 83263

BILL DUTRO
12043 N 2000 E
COVE UT 84320

TERRY SMITH
3987 E GLENDALE RD
PRESTON ID 83263

LYLE PORTER
PRESTON WHITNEY IRRIG CO
32-51-E RD Box 311
PRESTON ID 83263

ROB HARRIS
HOLDEN KIDWELL HAHN
PO BOX 50130
IDAHO FALLS ID 83405

SCOTT CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701-0829

TROY FOSTER WATERMASTER
WATER DISTRICT #13-A
2063 E 1600 S
PRESTON ID 83263

JAMES CEFALO
IDWR EASTERN

JOHN HOMAN
IDWR STATE

DAVID M JOHNSON
3333 E GLENDALE RD
PO BOX 455
PRESTON ID 83263

DAVID & MELBA DUNN
7870 S 2450 E *c/o MARK F. DUNN*
PRESTON ID 83263

LARRY & LADAWN HANSEN
3175 E GLENDALE RD
PRESTON ID 83263

MURRY NICHOLS
140 N 100 W
PRESTON ID 83263

MARK WAYNE OWEN
1352 N 2200 E
PRESTON ID 83263

BILL DUTRO
12043 N 2000 E
COVE UT 84320

TERRY SMITH
3987 E GLENDALE RD
PRESTON ID 83263

*HYER FAMILY TRUST
c/o CHARLES HYER
3378 GLENDALE Rd.
PRESTON ID 83263*