



## 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](http://www.idwr.idaho.gov)

August 24, 2010

C. L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Interim Director

Neal Owen  
1929 Worm Creek 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. This effort included review of water right 13-305A, which authorizes diversion of 1.64 cfs for irrigation of 82 acres from Worm Creek that bears a priority date of April 1, 1893. The right also authorizes two points of diversion as shown in the attached water right summary. Please note that the right was decreed in 1981 to Clarence and Odessa Owen as part of the Worm Creek drainage decree. Tax lot records from the Franklin County Assessor's office confirms that you are the current owner of land described by right 13-305A.

Our inventory confirmed the water right point of diversion location in Section 2 but we did not identify a diversion in Section 11. The ditch diversion in Section 2 is shared with Webster Farm, LLC. Our inventory found that your diversion ditch in Section 2 also diverts water from Mink Creek that is injected to Worm Creek under water right 13-7747 owned by the Preston Riverdale and Mink Creek Company. We confirmed earlier this month that water was diverted to the shared ditch when Worm Creek was dry. Your Worm Creek right 13-305A therefore was not deliverable. We note that the place of use service area for Mink Creek water right 13-7747 does not include your irrigated lands described under right 13-305A. IDWR has no record of any water rights or water right exchanges that authorize your diversion and use of water from Mink Creek. However, IDWR notes that the Preston Whitney Irrigation Company (PWIC) has included certain lands described by water right 13-305A in its irrigated service area that is the subject of a pending PWIC water rights transfer application. Although we understand that you may be a PWIC shareholder, we are not clear how any of the lands under right 13-305A may be irrigated with PWIC shares. Moreover, we are not certain how any lands described by right 13-305A 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. We recognize that PWIC does hold water rights from Cub River that are separate from the Worm Creek decree and that water diverted under those rights from Cub River is injected to Worm Creek but we are not aware of any re-diversion or exchange of the Cub River water.

I request your cooperation to resolve this matter by:

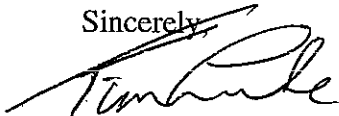
- reviewing the attached map and contacting our office to verify your ownership status of the parcels identified on the map;

- identifying what lands are irrigated and water right or rights cover your development if our records are not correct;
- cease further diversion of water from Mink Creek to the identified parcels if you do not have water rights from that source;
- and/or obtain a valid Mink Creek water right (or exchange right) for any irrigation use that relies on Mink Creek as a water source.

**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,

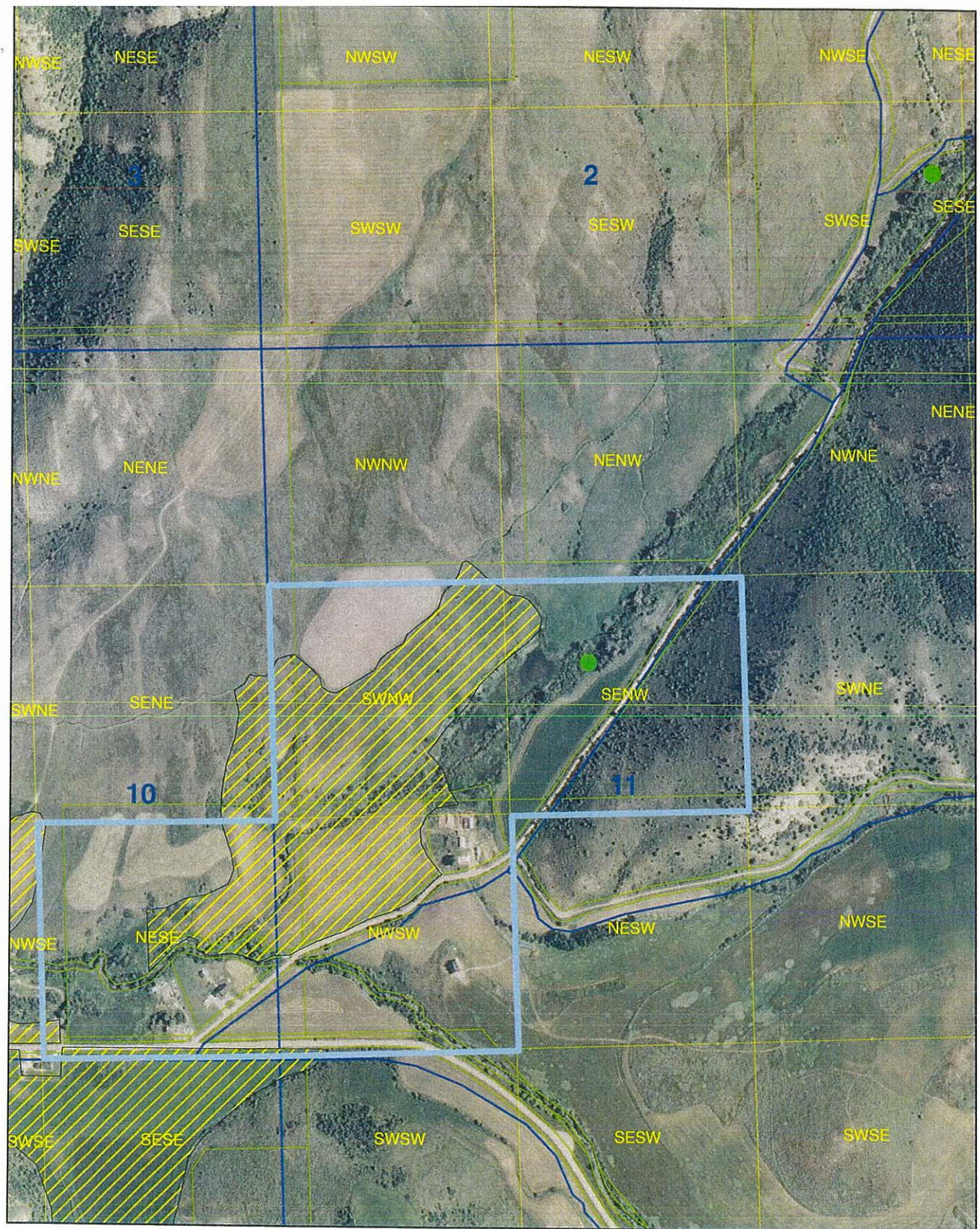


Tim Luke  
Water Distribution Section






Enclosure: Map of Potential Irrigated Lands without Water Rights and Irrigated Place of Use for Water Right 13-305A; Summary of Water Right 13-305A

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 Cefalo, IDWR Eastern Region  
John Homan, Idaho Deputy Attorney General





### Legend

-  Place of Use Right 13-305A
-  Sections
-  QQ
-  PWIC Irrigated Acres
-  Points of Diversion Rt 13-305A

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



0 0.125 0.25 Mile



## IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-305A

WATER RIGHT NUMBER: 13-305A

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ODESSA G OWEN RT 3 PRESTON, ID 83263
Current Owner	CLARENCE L OWEN RT 3 PRESTON, ID 83263

Priority Date: 04/01/1893

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>
STOCKWATER	1/01 to 12/31	0.040 CFS	1.40 AF
IRRIGATION	4/01 to 11/01	1.640 CFS	287.00 AF
DOMESTIC	1/01 to 12/31	0.040 CFS	1.20 AF
	<u>Total Diversion:</u>	1.640 CFS	289.60 AF

Location of Point(s) of Diversion

WORM CREEK	SW1/4SE1/4	Sec. 2, Twp 15S, Rge 40E, B.M.
FRANKLIN County		
WORM CREEK	SE1/4NW1/4	Sec. 11, Twp 15S, Rge 40E, B.M.
FRANKLIN County		

Place of Use

IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
15S 40E 10													35.0				35.0
15S 40E 11							30.0	7.0	10.0								47.0

Total Acres: 82

STOCKWATER same as IRRIGATIONDOMESTIC same as IRRIGATIONConditions of Approval:Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report 13-305A

Comments:

Dates and Other Information:

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: