



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 4, 1998

Mr. Don Shenton
P.O. Box 33
Dubois, ID 83423

Dear Don:

Last week you indicated that you had a water user who, in addition to diverting water at his decreed point of diversion, had also cut some dikes and withheld access to others to make the repairs necessary, thus interfering with and injuring other water rights. Through this action the water user you were inquiring about has been able to use water on land and for purposes not authorized by the court.

From your representation of the facts, it appears to me that the referenced water user may be subject to both civil and criminal penalties. However, from the perspective of the Watermaster I believe I would immediately treat this as an illegal transfer and would shut off, post and lock the user's decreed diversion to reduce the injury to other water rights. Since there is no legal process for changing a water right without approval of the department, this action will start the forfeiture clock. If this situation should continue for the requisite five years it is likely the right would be forfeited. However, if the new uses continue, one might assume the user intended to abandon the original point of diversion and place of use. Abandonment, unlike forfeiture, is the immediate result of an "abandonment action". In this case there ultimately may be issues of both abandonment and forfeiture.

Sincerely,

Ronald D. Carlson
Regional Manager

cc. Jerry Deutcher