



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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

WD 29

October 23, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Dale Hatch, President
Portneuf Irrigating Co.
10 Oneida Ave
Arimo, ID 83214

Re: Potential Unauthorized Use of Water

Dear Mr. Hatch:

A tour of Portneuf River diversions was conducted with local water users on October 8, 1998. This tour was requested by McCammon Ditch Co. and the water district advisory committee. It is my understanding that Portneuf Irrigating Company (PIC) received notice of this tour but that no representatives from PIC were in attendance.

During the tour, it was explained that Mr. Gordon Avery is one of several PIC share holders who has a turnout from that portion of the Portneuf-Marsh Valley (PMV) canal that is shared with PIC (i.e.; the shared canal above the split between the PMV and PIC canals). It was also stated that Mr. Avery's shares equate to 3 cfs. It was further explained that starting in the 1998 irrigation season, Mr. Avery began moving his shares between his turnout on the shared portion of the PMV canal and a turnout off of the PMV canal located below the split with the PIC canal. Upon researching this matter further, there is a question as to whether the land receiving the shares below the PMV and PIC split is actually within the boundaries of PIC. Moreover, there has been an indication that the new land receiving the shares was never irrigated before 1998, or that no other water rights exist for that land. I have researched the Department's records and find that no water right transfers have been approved for any rights or portions of rights owned by PIC.

IDWR is also aware that other PIC shares totaling about 3 cfs were moved from the PIC canal to the PMV canal below the PMV-PIC split. It is our understanding that this transfer took place at least several years ago and that the shares in question are either owned or operated by Randy Morris and/or Dr. Miller. The watermaster and several non-PIC water users in the area explained that there has been no change in the place of use regarding these latter shares. Other than this here say however, IDWR has no verification concerning the use of these shares.

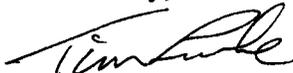
The purpose of this letter is to advise you that moving PIC shares to a place of use that is different from the place of use described under PIC's water rights constitutes an unauthorized use of the water. Expanding the number of irrigated acres either within or outside the PIC boundaries further constitutes an unauthorized use of water.

Given the above concerns, **the Department requests that you submit written comments on or before November 10, 1998 explaining how and where the Gordon Avery PIC shares and the Morris/Miller PIC shares were used or delivered in 1998.** This provides you an opportunity to clarify or correct the information which has been reported to IDWR. If the shares are being used on lands other than those described under PIC water rights, then the shares must either revert back to the original place of use or a water right transfer must be filed and approved.

Failure to respond and provide written comments to IDWR concerning this matter will likely result in IDWR issuing a pending Notice of Violation regarding the use of at least 6 cfs under the PIC's water rights. Additionally, IDWR is leaning toward instructing the watermaster of Water District 29 to appoint a lateral manager on the PMV-PIC canal for the 1999 irrigation season. The lateral manager will specifically be instructed to monitor the use of all PIC shares between the river diversion and the PMV-PIC split. If IDWR does not receive sufficient information regarding the use of the 6 cfs in question, then a lateral manager may be instructed to prohibit the delivery of 6 cfs to the PMV canal below the PMV-PIC split, and re-deliver the 6 cfs to the PIC canal or make the 6 cfs available to junior priority water rights on the Portneuf River.

If you have questions or wish to discuss this matter with me directly, please call 208-327-7864. I look forward to your response and the prompt resolution of this issue.

Sincerely,



Tim Luke
Water Allocations

cc: Gordon Avery
Randy Morris
Harold Jones, IDWR
Arlin Olson, Watermaster
Ervin Gilbert, PMV
Randall Budge, Attorney, PMV
Howard Hall, McCammon Ditch Co.