



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

July 31, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

KENLEY HINRICHS & LISA OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

TIM FEASE & KATHY ELLEN SOHN
4557 OLD VALLEY RD
EAGLE ID 83616

RE: WATER RIGHT ISSUES

Dear Concerned Parties:

This letter addresses issues raised by the July 14 office visit by the former parties and the July 23 letter sent by the latter parties regarding protested matters related to water use and other activities on or near your properties.

CONCERN ABOUT PUMPING FROM NURSERY POND

The Idaho Department of Water Resources (IDWR) conveyed written guidelines discussing authorized pumping from the pond on the Fease/Ellensohn property for use associated with the nursery business. These letters were dated August 7 and October 31, 1997. The water right analysis by IDWR has changed since that time.

Adjudication Claim No. A63-30485 was filed on March 11, 1998 to document a water use pre-dating the controversy. The claim is an affidavit of beneficial use that can be interpreted to include diversion of ground water from the artesian well and pond system. The claim has the "color of a water right" and will be resolved through the Snake River Basin Adjudication process. All of you have an opportunity to participate in that process. However, the claim is not an action before IDWR whereas the protested transfer and permit applications are actions before IDWR.

Therefore, it appears that the pond may be used within the limits outlined by previous IDWR correspondence in addition to limits defined by A63-30485. Further action by IDWR is not warranted at this time with respect to the issue of diversion of water from the pond on the Fease/Ellensohn property.

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CONCERN ABOUT VALIDITY OF HINRICH'S PROTEST

The protests filed by Hinrich for Transfer No. 5284 for Ballentyne Ditch Company shares and Application for Permit No. 63-12459 for the Fease/Ellensohn pond include the following statement:

Reasons stated at the meeting held Tuesday, July 14, 1998, from 1:30 to 3:30 pm at IDWR. These reasons were much more fully described and conveyed to IDWR personnel at that time.

While the concerns were well articulated and thoroughly discussed at that meeting, the protests will be enhanced if Hinrich documents his concerns in writing rather than by referring to a discussion at this office. The above statement from the protests is not grounds to dismiss the protests, but that statement by itself does not express any clear grounds for the protests. Clarification of the protests can be submitted to this office in a timely manner with copies sent to the applicants as required by Sections 42-203A and 42-222, Idaho Code.

The most likely next step in the two water right applications, assuming that IDWR does not learn that you have resolved the dispute, is to conduct a hearing for both matters considered together.

Please let me know if you need more information about these topics.

Sincerely,



Steve Lester
Water Rights Supervisor

c: T. Loucks, President Ballentyne Ditch Co.



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October 31, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MR TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

RE: USE OF GROUND WATER FOR IRRIGATION PURPOSES

Dear Mr. Fease:

Enclosed is a copy of a complaint received at this office on October 29, 1997 regarding irrigation at your nursery. The complaint refers to the Idaho Department of Water Resources (IDWR) letter dated August 7, 1997 in which the parties were informed that IDWR will not allow irrigation without a valid water right after the ditch company ceases delivering water.

Today's letter confirms that you have remained in contact with this office regarding this subject in an effort to document what you believe to be a beneficial use ("grandfather") irrigation right(s) using ground water as a source. Furthermore, it appears that you are working on other solutions to your overall water use situation, e.g. transfer application to import water from another irrigation right(s) to cover any water right deficit that might exist for your land. No filings have been submitted to this office for irrigation from ground water for your property.

I recognize that some of the delay in filing the appropriate water right documents has been due to my delay in responding to your requests for technical information. These delays by IDWR have been regrettable but unavoidable.

Now, however, IDWR must require you to show that continuing irrigation is authorized by a water right. Specifically, please provide documentation within ten (10) days of receipt of this letter to verify whether or not you have adequate water rights to allow irrigation after the surface water is not available. Without authorized water right protection, IDWR will be obligated to issue a cease and desist order to curtail continued irrigation.

Please contact this office if you need more information.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure: copy of complaint
c: Lisa O'Toole and Kenley Hinrichs



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region. 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

August 7, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

KINLEY HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

*this copy for
"FEASE" fl*

Re: Various Water Right Issues:

Gentlemen:

Both of you have visited our office and written correspondence defending your positions in a dispute that is contentious. I have listened to both of you present your respective sides of the story and your descriptions of the behavior and demeanor of the other person. Each of you describe the activities of the other with some indignation. The facts described by each of you don't seem to match up well. Nonetheless, I will attempt to recite facts that I think are not in dispute with respect to the use of water:

1. Each of you has a pond that is hydrologically connected to the other. It appears that both of the ponds were constructed in a natural drainage area that may once have been a part of the Middleton Mill Ditch. The Fease pond is hydrologically upstream of the Hinrich pond.
2. A pond was or is presently being constructed by Fease near the Boise River on his property. The purpose of the construction is unknown at the present time.
3. Surface water rights are delivered from the Boise River to both the Fease and Hinrich properties. The surface water rights irrigate the Fease and Hinrich properties.
4. Fease operates a nursery business on a portion of his property. Both the nursery and the residual Fease property are irrigated by the surface water from the Boise River. In addition, water from the pond and water delivered from one or two artesian wells irrigate plants of the nursery. The nursery plants are irrigated beyond the normal delivery of the surface water rights.
5. No water rights authorize irrigation by Fease beyond the normal irrigation season when water is delivered from the Boise River.

6. Hinrich filed two applications for permit for use of water in his pond. One application, now advertised and protested by Fease, proposes diversion of water for storage and aesthetic storage. Another application proposes irrigation from the pond, but is being held until the department begins processing applications.

7. Fease has not filed any water right applications to authorize storage in either of his two ponds. Furthermore, no water rights are on file authorizing diversion from ground water for irrigation by Fease.

The Idaho Department of Water Resources (IDWR) has not required every owner of a recreational storage pond on the Boise River to obtain a water right for the storage. If a dispute about the use of water arises, however, a water user can protect himself by obtaining a water right for his use. I understand that Hinrich filed his water right applications according to this understanding. IDWR has not yet regulated the use of water in recreational ponds. This policy may change in the future, however, if the use of water along the Boise River is more highly scrutinized. Your dispute is forcing IDWR to look at the use of water in your ponds in greater detail.

If the facts I have represented above are correct, you should adhere to the following instructions:

1. IDWR has not required a water right for storage of water already diverted if the reservoir stores and the water stored is released from the reservoir with a 24 hour period. Again, we have not enforced this rule strictly. IDWR will not regulate the diversion of ditch water to your reservoirs if water is being continuously diverted to the reservoir, and you are regularly diverting water from the reservoir in quantities not exceeding what was diverted into the reservoir. In other words, the level of the reservoir should remain relatively constant. The reservoir should not be drawn down significantly.

2. Any irrigation beyond the time when Boise River water is not being delivered without a water right is a violation of the law, IDWR will not allow the diversion of water after the irrigation company's ditches are not delivering surface water.

Fease represented to me that September is not a good time for a conference. Hinrich indicated that the last two weeks of October are not a good time for a conference. I will schedule a conference the first two weeks of November. By then, the water should be turned out of the ditches and any irrigation without a water right should cease.

Sincerely,

Gary Spackman

GS:st