



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

December 12, 2006

Ms. Mary Sue Hege
Personal Representative of the Christensen Bypass Trust
1850 N. Andrew Lane
Kuna, ID 83634

RE: Fill of Reservoir Under Water Right No. 35-12863A

Dear Ms. Hege:

I am responding to your inquiry dated November 7, 2006 and received in this office on November 16, 2006, in which you clearly described an issue relative to the fill of a reservoir under water right number 35-12863A. Based on your letter it appears that there is a disagreement between the property that you represent and the desire of the Idaho Department of Fish and Game (IDFG) to maintain water in the reservoir on a year-around basis.

I have reviewed the water right information in this matter and have concluded that the water right in question *allows* the reservoir to contain water on a year-around basis, but does not *require* the reservoir to be filled year-around. Filling of the reservoir is dependent on (1) the availability of water in the unnamed drain that is the source of the water right, with a priority date of April 20, 1971, and (2) the arrangements between the owner of the water right, IDFG, and neighboring property owners.

The question in your letter is whether you should be required to change the management practices relative to your own diversion works and incur damages in order to provide year-around storage. From my perspective, the answer to this question is not driven by the water right but rather is driven by other factors such as water availability, relative seniorities of water rights from this source, and agreements between the IDFG and neighboring property owners.

I am not certain that this reply will be of value in resolution of this matter. Please advise if you feel that there should be more involvement from our office in this matter than I am reflecting herein.

Sincerely,

David R. Tuthill, Jr.
Administrator, Water Management Division

cf: Lyle Swank, and State Office File for 35-12863A