

Carl R Christensen
Christensen Bypass Trust
1850 N Andrew Ln
Kuna, ID 83634

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November 7, 2006

Mr. David Tuthill, Allocations
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Dear Mr. Tuthill,

I am requesting your assistance with the following issue. The Idaho Fish & Game Department (IF&G), Pocatello Field office, is presently demanding that we fill and maintain the storage in our reservoir year round pursuant to their water right #35-12863A.

Dean Rose of the IF&G spoke with Lyle Swank in the IDWR Idaho Falls regional office in mid-to-late October. I called that office on the 30 of October to speak to Mr. Swank, but he referred my call an assistant, who did not appear to have reviewed the file nor did he give a **comprehensive coherent or adequate answer**, so upon my return to Boise, I went to the IDWR headquarters office in Boise and reviewed all the digitized documents available in the water right file there.

Based on that review, I question the demand to store the water year round as per the IF&G. The following items from the water right file appear to be at odds with the IF&G storage demand.

1. Under conditions of approval, Item 2 states in part '*refilling the impoundment is allowed*'. This seems to recognize that the reservoir is not always full.
2. Under the comments section, item 1 states, in part, the following: "***This is a flow-thru system only, no active storage is required.***" My understanding is that this statement is from the original application filed by IF&G, yet they now appear to want a change in their usage as they now want 'active storage'.

My father, Carl Christensen, purchased his property in Sterling Idaho in 1953 including a water right (originally license number 3479, now 35-02009) which dates to 1908. The reservoir is located on property purchased by the IF&G in about 1971. The original US Government patent on this land is dated May 1909, subsequent to the date of the water right, and includes the following language "to have and to hold subject to any ditches and reservoirs". This water flow has historically been managed in a manner designed to maintain and preserve the integrity of the diversion works and therefore our underlying water right.

Historically, at least since 1953, the water has been 'stored' or blocked behind the dam/diversion each year during the early-mid April through the early-mid October time frame. Basically storage was in place during the irrigation season. The exception was when the dam was drained two to three times each summer to kill algae and control moss buildup.

The reasons for utilizing the flow-through rather than the storage of the water during the winter months are as follows:

1. Winter storage results in significant sub-water into neighboring properties both our own and that of our neighbors.
2. Winter storage encourages propagation of the muskrat population and results in damage to the ditches, drains and the dam itself which results in flooding of crop land.
3. Winter storage has on at least two occasions of which I am aware resulted in the dam washing out when we get a January thaw. This sudden thaw caused flooding and washout of the county road as well as surrounding crop land.
4. When the dam is full of water and freezing occurs, the ground and the head gate of the diversion works will freeze making it impossible to open them and divert the thawed water into the existing ditches and drains.

The Idaho Fish & Game Department (IF&G) has entered into agreements with my parents since about 1988 with varying trades and conditions, but in reviewing these agreements, I cannot see that the dates of storage have ever extended beyond November, nor started earlier than the April time frame. There has been no year-round storage to this point in time. Additionally, the agreements include the verbiage that nothing in the agreement shall be construed as conveyance of the water rights. The IF&G also stated in their application that they did extensive repair work to the structure when their ponds were constructed. Those repairs/reconstructions were done by IF&G in order to reconstruct the dam and build an additional outlet so that they could fill the 20 acre wildlife pond located downstream from this dam under water right 35-8631. This work was done subject to a temporary easement give to IF&G by my parents.

Our utilization of the water right and management of the diversion is no different today than it was when the application was made. While the pond is sometimes full, should we be required to change the management practices relative to our own diversion works and incur the damages as outlined above in order to provide year round storage when that is not the historical nor the 'applied for' use of this reservoir?

Thank you for your assistance with this matter. Please call me if you should have any questions or if I can provide any further information.

Sincerely,

A handwritten signature in cursive script that reads "Mary Sue Hege". The signature is written in dark ink and is positioned above the printed name and phone number.

Mary Sue Hege
922-4343