

August 1, 2000

Allen Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

RECEIVED
AUG - 3 2000
Department of Water Resources
Southern Region

Re: Pomerelle Diversion

Dear Allen:

Earl Warthen has asked me to contact you once again about the Forest Service's diversion from Bennett Spring at Pomerelle. We appreciate your attention and past efforts in this matter. However, there are several items which we believe require explanation and/or additional follow-up. They are discussed below.

1. May 22 Meeting & Field Visit. During the May 22, 2000 meeting at Bennett Spring, Woody Anderson alleged that there was a "restraining order" in place against Earl Warthen which prohibits Earl from entering onto the Forest Service's Pomerelle Ski Area. As a result, Earl was excluded from the field visit following the meeting, apparently with IDWR's acquiescence. These events are documented on page 4 of your written report, dated May 31, 2000. The fact is that no such restraining order was produced at the meeting and we are unaware that one exists. Consequently, Earl should have been allowed to participate in the field visit, as the other meeting attendees were. As you will recall, Earl was also left off the invitation list for a mid-March meeting attended by IDWR and the other parties regarding this matter. In the future, we request that Earl be allowed to participate fully in all meetings -- including on-site field visits. Earl is a full party to the contested proceedings on the permit and transfer applications for the Bennett Spring diversion and has also been active in calling for administration on Howell Creek and its tributaries, including Bennett Spring, under the priority doctrine. He has as much right as any other individual to be involved in these matters and we insist that Earl be treated appropriately by IDWR and the other parties in the future. In addition, other parties to the contested proceedings (e.g., Fred Hawker) should be invited to participate.

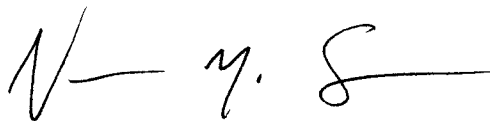
2. Measuring Devices. In your May 31 memo, you note that water from Bennett Spring is metered only after it enters the pump room of the lodge and conclude that this is adequate. Our reading of Idaho law suggests that diversions are to be measured from the source, or as near as practicable. In this case, there appears to be no valid reason why the diversion cannot be measured at the source (e.g., the spring box pump). Accordingly, we request that IDWR require the diversion to be measured at the source and that measurements be reported to IDWR and the watermaster. We concur in your suggestion that the diversion be shut-off during the summer months and request verification that this has in fact occurred.

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3. Protested Matters. In your May 31 memo you also note that the Forest Service had requested holding off on a pre-hearing conference on the contested permit (45-07745) and transfer (5194; 45-04114) applications until after a new attorney had been brought on board. My understanding is that the new Forest Service attorney is now in place. As a result, we request that you again inquire of the Forest Service regarding the need for a pre-hearing conference. We think expediting this matter is especially important given the past, unauthorized snow-making that has occurred at Pomerelle, in addition to other activities that have occurred more recently at Pomerelle, including the hauling of pipe to the ski area this summer. To aid the process, we suggest that IDWR, accompanied by the parties to this matter, view the entire system at Pomerelle to verify what the current status is.

Thank you for your continued attention to this matter. We look forward to hearing back from you as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. M. S.', with a stylized flourish at the end.

NORMAN M. SEMANKO

07310001.NMS

cc: Steve Spencer, USFS
David Negri, Dept. of Justice
Andrwood, Inc.
Roger Ling
Ron Sorenson
Don Gunderson
Fred Hawker
James Annest
Earl Warthen