



State of Idaho

DEPARTMENT OF WATER RESOURCES

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April 11, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

DANIEL V STEENSON
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

Re: Petition for Correction and/or Clarification of Licensed Water Right No. 36-8089

Dear Mr. Steenson:

The Department of Water Resources acknowledges receipt of the petition referenced above. The petitioner seeks to modify and/or clarify license no. 36-8089, in particular Condition no. 9.

Condition no. 9 requires that "Sufficient water shall be left undiverted from Billingsley Creek so that the flow of water in Billingsley Creek between the point of diversion and the point where the water is returned to the creek is at least twenty-five (25) cubic feet per second." The petition requests that the Department modify and/or clarify the condition so that when water is diverted for fish propagation purposes under right no. 36-7725, then such water may be re-used for power purposes under license no. 36-8089 even if there is less than 25 cfs in Billingsley Creek.

We have reviewed the Department's records for right nos. 36-7725 and 36-8089 and determined that correction or modification of license no. 36-8089 would not be appropriate. The condition was originally applied to the permit authorizing development of the water right through a contested case, hearing and order of the Department. The water right records also indicate that the petitioner thoroughly reviewed the preliminary orders issued prior to the final approval and issuance of the water right license.

The Department acknowledges that Condition no. 9 on license 36-8089 could be subject to different interpretations. Therefore, clarification of the condition is appropriate as described below.

Water right no. 36-7725, as decreed in the SRBA, authorizes up to 100 cfs to be diverted for fish propagation purposes and does not include a condition requiring that water be left undiverted in Billingsley Creek at any point. License no. 36-8089 authorizes up to 120.2 cfs for power purposes and includes Condition no. 9 stated above. Both water rights are limited together for a total of 120.2 cfs and 87022.1 afa.

Any water first diverted and used for fish propagation under right no. 36-7725, up to 100 cfs, can also be used for power generation even if there is less than 25 cfs remaining in Billingsley Creek between the authorized diversion and discharge points. Additional water, beyond the amount diverted and used for fish propagation, cannot be diverted for power purposes under license no. 36-8089 unless 25 cfs remains flowing in Billingsley Creek between the authorized diversion and discharge points.

Examples (all units in cfs)

Amount in Creek Prior to Diversion	Amount Used for Fish Prop.	Amount Used for Power	Total Amount Diverted	Amount to Remain in Creek
150	100	120.2	120.2	29.8
150	75	120.2	120.2	29.8
120.2	100	100	100	20.2
120.2	75	95.2	95.2	25
100	100	100	100	0
100	75	75	75	25

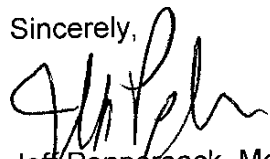
Note that the 1st and 2nd lines in the example demonstrate that the fully authorized amount could be diverted for power because at least 25 cfs would remain in the creek between the diversion and discharge points. The 3rd, 5th and 6th lines in the example demonstrate that no additional water could be diverted and used for power purposes because the amount remaining in the creek would be less than 25 cfs. The 4th line in the example demonstrates that additional water could be diverted for power purposes, but only to the extent that provides 25 cfs to remain in the creek.

By copy of this letter, the Department is instructing the watermaster of Water District 36A to regulate the distribution of water for these water rights in accordance with the interpretation of Condition no. 9 as provided in this letter.

Please note that Condition No. 6 of license no. 36-8089 subjects the water right to review by the Director on or after March 31, 2030 where the Director may cancel all or any part of the use and may revise, delete or add conditions upon appropriate findings relative to the interest of the public. Also please note that the clarification provided in this letter does not relieve the water right owner from limitations or requirements of other governmental agencies with authority over the fish propagation or power generation projects associated with these water rights.

If you have any questions or concerns regarding this matter, please feel free to contact the Department.

Sincerely,



Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

cc: IDWR Southern Region
Watermaster, WD 36A