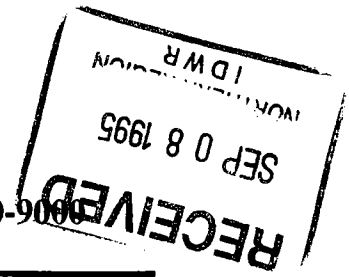




State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
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PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 1, 1995

Re: Watermaster Authority Regarding Trespass and Control of Beavers

Dear Watermaster:

Attached to this letter is an excerpt from the 1993 IDWR Watermaster Handbook regarding the above referenced topic. The attached document, which is unchanged from the handbook, represents IDWR's current direction to watermasters regarding authority of trespass and control of fur bearing animals.

IDWR wishes to notify all watermasters that a memorandum involving this subject was recently sent to the Governor's Office by the Idaho Attorney General's Office. The memo from the Attorney General's Office emphasizes that state agents have no authority to enter onto private property in trespass to remove beavers or beaver dams which obstruct water delivery to downstream irrigators. State agents include employees of IDWR and watermasters who are appointed by the Director of the Department of Water Resources.

In light of recent problems regarding removal of beavers from private property, IDWR suggests that watermasters confronted by this issue encourage water users to work and negotiate directly with private property owners. Local IDFG staff should also be consulted about any beaver control problem which originates on lands not owned or controlled by the injured water user.

Sincerely,

A handwritten signature in cursive script that reads 'Tim Luke'.

Tim Luke
Water Allocations

cc: IDWR Regional Offices

AUTHORITY REGARDING TRESPASS & CONTROL OF BEAVERS*

Both IDWR employees and watermasters have authority under Idaho law to make reasonable entry upon any lands in the state for the purpose of distributing water, adjusting headgates or controlling works, making investigations and surveys, or for other purposes necessary to carry out any of their duties imposed by law (Section 42-1701(5), Idaho Code). Construction of measuring devices by IDWR employees and watermasters are not authorized unless first having a written agreement with the landowner.

Section 36-1107, Idaho Code provides some specific direction concerning the control and removal of fur bearing animals such as beavers and muskrats. The Idaho Department of Fish and Game (IDFG) employees have immunity from liability for damage claims which may arise from the removal or destruction of dams or houses of fur bearing animals. Watermasters appointed by IDWR and IDWR employees do not enjoy this immunity protection and thus should not physically undertake removal of fur bearing animals, their dams or houses.

Section 36-1107(a) essentially provides that the "owner or lessee" of property being damaged or destroyed, "may make complaint and report the facts to the director (IDFG) or his designee...". It is reasonable to interpret that the concern for the protection of property as described in Section 36-1107(a) is broad enough to include water rights as a type of property eligible for protection under the statute. Requests to remove fur bearing animals or their dams and houses which is interfering with the delivery of water rights should be made to IDFG in the form of a written complaint by the owner of a water right. IDFG then is charged by statute to investigate the complaint and take appropriate action. IDFG will usually issue permits upon request to remove wild animals in order to protect irrigation ditches, banks, canals reservoirs or dams. Under Section 36-1107(c), muskrats may be taken at any time without a permit when they are in or along irrigation ditches, reservoirs or dams by the owners or employees of the structures.

*(Excerpt from Section 12(C), 1993 IDWR Watermaster Handbook)