



State of Idaho
DEPARTMENT OF WATER RESOURCES

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GOVERNOR

KARL J. DREHER
DIRECTOR

May 28, 1996

Mr. Mark Limbaugh, Watermaster
Water District No. 65
102 N. Main Street
Payette, ID 83661

RE: Exchange Agreement Between Lower Payette Ditch Company and Lake Reservoir Company

Dear Mark:

During the August 28, 1995, meeting of the Water District No. 65 Advisory Board, I agreed to review the issue of "what activates the exchange of water between Lake Reservoir Company and Lower Payette Ditch Company relative to the diversion of the Graveyard Gulch Wasteway." I subsequently reviewed the issue and provided an oral report at the September 25, 1995, meeting. The minutes for this meeting were discussed at the meeting held on November 13, 1995. The minutes had been well prepared, but due to the complexity of this particular issue, it appeared that augmentation of the minutes via a letter would be appropriate. The purpose of this letter is to provide documentation to augment the minutes of the meeting. To provide full background information I will reiterate the minutes of the September 25, 1995 meeting of the Advisory Board and details of the Memorandum Agreement between Lake Reservoir Company, Inc. and Lower Payette Ditch Company, and discuss pertinent water rights.

Minutes of September 25, 1995 Meeting of the Advisory Board

The minutes of the meeting state in pertinent part as follows:

A question regarding Lower Payette Ditch Company and Lake Reservoir. Under what circumstances does Lake Reservoir Company have the opportunity to exercise an agreement where Drainage District #1 serves Lower Payette in exchange for Lake Reservoir water? From the Lake Reservoir minutes of July 14, 1980, and a Memorandum Agreement of September 10, 1980; It is agreed that the board does reaffirm an agreement between Lake Reservoir and Lower Payette that when the river flow is not adequate and Lower Payette has to draw on their storage, Lower Payette may in lieu thereof, divert water from Canyon County Drain #1. It also states that Lower Payette does not relinquish any rights to its share of storage rights in the Lakes. Lower

Payette can implement this any time the natural flow is not adequate. Dave [Tuthill] stated that Lower Payette should be able to market its water in Lake Reservoir Company in any year as an alternative method of using that water. Lake Reservoir is clearly not required to take water from D.D. #1 based on this decree. Lake Reservoir filed on the first 60 sec. feet of D.D. #1. To the extent that water is used, the first 60 sec feet goes to Lower Payette. Maintenance is reimbursed to Lower Payette by Lake Reservoir. The point was reemphasized that it is not when the drain is diverted, but when the natural flow for Lower Payette is not available. Lower Payette receives whatever is in the lower reach and whatever water right might be on upstream and in that case, natural flow could be sent past Letha.

Cecil [Shurtleff] commented that when this was written, no one could have envisioned that if the water flow in the river was not enough for Lower Payette, it wasn't due to drought. Now, the way the river is regulated, it is an artificial drought each year. Dave commented that could be determined by looking at the cutoff dates. Lower Payette has rights prior to 1900. Lower Payette has always been willing to share their Lake water with other companies in a short year -- but when there is ample water, he [Cecil Shurtleff] feels it is unfair for Lower Payette to give up their water. The way the contract is written, that is unnecessary.

Memorandum Agreement between Lake Reservoir Co., Inc. and Lower Payette Ditch Co.

Enclosed please find a copy of the Memorandum Agreement dated September 10, 1980, to which the minutes refer. This agreement was developed as a refinement of an agreement contained in the minutes of a Lake Reservoir meeting dated July 14, 1980. The July 14, 1980 minutes are incorporated into and referenced in the Memorandum Agreement dated September 10, 1980, as Exhibit A thereto. The principle provisions of the Memorandum Agreement are as follows:

1. Lake Reservoir Company, Inc. (Lake Reservoir) is the sole owner of the irrigation diversion ditch and structures directly connected with the diversion of said waters to Lower Payette Ditch Company (Lower Payette).
2. Lower Payette supervises, operates, maintains, repairs, and reconstructs structures associated with diversions from Drainage Ditch No. 1. Costs are paid by Lower Payette and are reimbursed by Lake Reservoir.
3. Lower Payette shall notify Lake Reservoir prior to implementing diversion of water under this agreement.

4. **When the river flow is not adequate, and Lower Payette needs to draw on the storage water in the lakes, Lower Payette may in lieu thereof, divert water from Canyon County Drainage Diversion No. 1, and in exchange, will allow their storage water in the lakes to be divided among the other stockholders, in an amount equivalent to that amount of water diverted from Canyon D.D. No. 1, up to a maximum of 60 second feet, as allowed by water license No. 17670. (emphasis added)**

Water Rights

Water rights in the files of the department, with point of diversion related to this issue, are described below. Computer report representations (profile reports) of these rights are enclosed. All of these water rights have been claimed in the Snake River Basin Adjudication for the same rate of flow as that shown on the associated water right.

Water Right in the Name of Lake Reservoir Company:

Decreed Water Right No. 65-02376

This water right was initially numbered 17670 and is referenced in the agreement above. At the time of the agreement it was a licensed water right, but it has since been decreed in the Payette River basin decree. Note that the decreed sources are Main Drain tributary to the Payette River, and Unnamed Stream, tributary to the Payette River. The described points of diversion are SESW S. 7, and NWSE S. 19, T 7N, R 3W. As shown on the enclosed maps, these are the points where the Main Drain diverts into Graveyard Gulch, and where Graveyard Gulch (called Unnamed stream because it combines Graveyard Gulch and the unnamed drain) diverts toward the river. This water right is the senior right for this diversion, dated 04/02/1932. This is the only water right at this location in the name of Lake Reservoir Company. Rate of flow: 60.0 cfs.

Water Rights in the Name of Lower Payette Ditch Company:

Beneficial Use Water Right No. 65-11413

This water right is junior to the Lake Reservoir Company water right, but is for the same 60.0 cfs, to be diverted at the same location and to be used on the same property. A proposed condition of approval states that this water right, when combined with water right no. 63-02376 shall not exceed 60.0 cfs, meaning that when diversions are being conducted for Lake Reservoir Company, this water right shall not be used. This water right is still a beneficial use claim because it was not included in the partial decree of Payette River water rights entered in 1986.

Licensed Water Right No. 65-07882

This water right adds 30.0 cfs to the diversion capacity of this system, with a priority date of 05/13/1977.

Licensed Water Right No. 65-12279

This water right adds 3.02 cfs to the diversion capacity of this system, with a priority date of 04/07/1980, making a combined total of 93.02 cfs which is the measured rate of flow through the system.

Discussion

The key factor in this analysis is the agreement between Lake Reservoir and Lower Payette. As stated in the agreement, **the exchange is invoked when "the river flow is not adequate, and Lower Payette needs to draw on the storage water in the lakes."** During most portions of most years the Lower Payette water rights from the Payette River are senior enough to not require delivery of storage water from the lakes. It appears that during these periods the Lake Reservoir exchange does not need to be implemented, even though diversion of water from the Graveyard Gulch Wasteway (or unnamed stream or Main Drain) is being implemented.

The determination of when the exchange is to be invoked can be made by the Watermaster, via a comparison of (1) priority date cuts on the river, and (2) a determination of use of the water diverted under these water rights. As an example, consider a situation when water rights on this reach of the river are cut back. The senior Lower Payette water rights are as follows:

| | | |
|-----------|------------|------------|
| 65-00165X | 122.12 cfs | 06/01/1882 |
| 65-00165A | 63.32 cfs | 03/22/1884 |
| 65-00165B | 37.63 cfs | 06/20/1896 |
| 65-00165C | 59.23 cfs | 06/01/1912 |

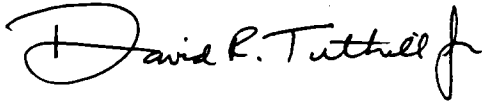
If the priority date cutoff for this reach is 1883, and the flow in the Lower Payette ditch is 152.12 cfs, then 30 cfs is being provided from storage. If the diversion from Graveyard Gulch is flowing at least this amount of water, then the 30 cfs is considered to be provided as exchange water from Lake Reservoir Company. Thus, normally a simple comparison between the reading on the Lower Payette measuring device, the priority date cutoff, and the water right listing above will be an indicator of exchange usage. Only when the flow diverted is greater than the flow provided by the priority water right will the Watermaster need to measure the amount diverted from the wasteway.

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During a normal water year this will be a relatively rare occurrence and Lower Payette will have the flexibility to market their share of Lake Reservoir water to other users.

This letter has been prepared to present available information to clarify this issue for smooth and proper operation of Water District 65. It is possible that others will have information that could result in modification of this analysis. This letter is respectfully submitted as augmentation to the minutes of the September 25, 1995, Advisory Board.

Sincerely,

A handwritten signature in cursive script that reads "David R. Tuthill, Jr." followed by a stylized flourish.

David R. Tuthill, Jr., P. E.
Manager, Western Regional Office

Enclosures:

Memorandum Agreement dated September 10, 1980
Profile Reports of Water Rights
Maps

cc w/enclosures: Lake Reservoir Company (Marcia Herr)
Lower Payette Ditch Company (Cecil Shurtleff)