



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

*file W D 65*

August 16, 1996

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

MR ROBERT N JOHNSON  
977 EDMONT RD  
EMMETT ID 83617-9510

**RE: COMPLAINT REGARDING LONG HOLLOW CREEK DRAINAGE**

Dear Mr. Johnson:

On July 26, 1996, I visited with Roger Klingback regarding your recent complaint of the use of water from a spring(s) tributary to Long Hollow Creek. You had described a problem involving water rights associated with the Klingback property (spring) and the Dishner land (creek).

The Klingback property includes three decreed water rights, among others, from springs tributary to Long Hollow Creek. All of those rights have a 1899 priority date, and between the rights provide 0.61 cubic feet per second (cfs) for up to 25 acres of irrigation plus water for stock and domestic use. The combined total from these rights can also be described as 30.5 miner's inches or 274 gpm.

The specific right that you mentioned in your letter was Klingback's right no. 65-01770. The right for that spring in Section 1 allows 0.10 cfs (5 miner's inches or 45 gpm) to irrigate seven acres in Section 1 with a 1899 priority.

The Dishner property has two Long Hollow Creek decreed rights that have priorities of 1908 and 1928. Of course, this means that the Klingback rights from springs tributary to the creek are entitled to water up to the limits of the rights before such water would reach the creek to fill the Dishner rights.

There is only one method to regulate the use of water in the Long Hollow Creek drainage at this point. The creek is tributary to the Payette River and, as such, is a non-regulated portion of the Payette River Water District. The drainage can become a regulated part of the water district by petitioning Watermaster Mark Limbaugh. This office would then work with the watermaster to evaluate and implement the petition.

Being part of an active water district carries with it certain responsibilities and costs. The waterusers would be required to install and maintain lockable and measurable diversion works to allow the watermaster to effectively deliver water rights in priority order. The watermaster would levy and collect annual fees for this service.

Although highly unusual, it is conceivable that springs tributary to a creek could become regulated in a water district - generally, regulation focuses on stream diversions rather than sources tributary to streams. In order to deliver a water right, the watermaster would first have to determine that the call for water is not a futile call. A futile call is one in which the delivered water would either not reach the point of diversion calling for the water or would

August 16, 1996  
Page 2

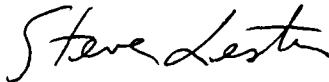
reach that diversion in such a minor amount that beneficial use could not occur. If that were the case, the watermaster would not be authorized to honor the call for water.

The department cannot regulate the actual amount of water being diverted from any of the rights in question. That level of regulation can only be handled via the watermaster method. In this situation, it is difficult to imagine a satisfactory outcome to watermaster regulation of rights within the Long Hollow Creek drainage considering the costs associated with regulation and the possibility of futile calls for water given the nature of the drainage and the limited water supply as the irrigation season progresses.

In summary, my field visit in response to your complaint did not reveal any improper activities subject to department action regarding the Klingback water rights. It is conceivable that the drainage can be placed under watermaster control, although I personally doubt the value and effectiveness of that route as a useful solution to this situation.

I realize that this information does not provide you with a solution that you may find particularly helpful. The only thing I can suggest is that you meet with Mr. Klingback and Mr. Limbaugh to see if an informal arrangement can be made to satisfy all of the parties. The department can assist the watermaster as needed if either an informal or formal method is selected to help solve the problems in your area.

Sincerely,



Steve Lester  
Deputy Regional Manager

c: Roger Klingback  
Mark Limbaugh, Watermaster #65