



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

October 3, 1994

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Goose Creek Water Users

Re: Questions Regarding Goose Creek Water Users Meeting Scheduled for October 11.

Dear Water User:

I have received a letter of inquiry from a Goose Creek water user who asked that I respond to certain questions prior to the meeting which has been scheduled for October 11 in Oakley. I have agreed to respond to certain questions. The responses hopefully will save some time at the upcoming meeting.

Listed below are my responses to the questions which were addressed to me. I have paraphrased the questions in the interest of space.

Question 1: Only 37 percent of the Goose Creek basin is in Idaho. Controlling Idaho water use only would be meaningless. Shouldn't there be a single watermaster for all three states and shouldn't any such 'water district' consist of users from all three states?

- While this is a reasonable question, I have advised Goose Creek users in the past that Idaho watermasters are prohibited from regulating diversions in neighboring states. Interstate regulation generally is not accomplished without an interstate compact.

Attached to this letter is a copy of a letter dated July 18, 1994 from the Idaho Attorney General's office to Don Pickett concerning interstate regulation. The letter indicates that IDWR director Keith Higginson had asked his counterpart in Utah to look into the status of administration of Goose Creek waters on the Utah side of the border. I intend to ask Mr. Higginson about the Utah response, if any, prior to the October 11 meeting.

Finally, it is worth noting that although portions of the Goose Creek drainage are located in Utah and Nevada, most of the water use and water rights within the basin are located in Idaho. My review of water rights in Utah and Nevada in 1992 (see copy of letter dated 8/11/92 to Oakley Canal Co. and mailed as attachment to all Idaho Goose Creek users with letter dated 10/20/92), shows that the sum of water rights in Utah is less than 13 cfs while that in Nevada is less than 12 cfs. The total of these out-of-state rights is considerably less than the total of all Goose Creek rights in Idaho. I can not address the question as to whether the out-of-state uses exceed the water rights.

Question 2: What is IDWR's position regarding irrigation check dams and 'so-called crossings' located within Goose Creek which back-up

water and sub-irrigate 'hundred's of acres' even though surface water is not diverted into canals or ditches.

- Irrigation check dams in a stream channel are normally considered part of the diversion works for a diversion ditch. During times of regulation, such check dams may be controlled by a watermaster if necessary to deliver the proper quantity of water to the diversion ditch or ditches according to the water rights, and to also meet demand of other senior priority water rights. If the rights which are served by such check dam can no longer be delivered either because of water supply or irrigation season limitations, then the boards or other material in the check dam should be removed, thereby lowering the water level and increasing the velocity of water in the stream channel.

The so-called crossings which are not associated with irrigation diversions or would not constitute diverting works are structures which should be regulated under the State's Stream Channel Protection Act which IDWR also administers. The act provides procedures and protocol for the proper permitting and construction of non-irrigation stream channel structures. Such structures which are not permitted or constructed properly may be in violation of the act and could be subject to civil penalties.

Question 3: What is IDWR's policy regarding a watermaster's control of beaver dams and plugged culverts in crossings.

- Debris which plugs culverts and which impact delivery of water can be removed by the watermaster. If a watermaster has not been appointed, then the impacted water right holder should work with the appropriate landowner concerning cleaning of culverts. If this fails, the landowner may be in violation of certain misdemeanor statutes regarding obstruction of stream channels. Such statutes are enforceable by the county sheriff.

There is a definite procedure and protocol within Idaho regarding the removal of beavers and beaver dams. This protocol is summarized on page 43 of the IDWR Watermaster Handbook (see attached copy of page 43).

I hope these responses will make for a more productive water users meeting and/or help clarify certain questions held by many of the water users who plan to participate at the October 11 meeting.

Sincerely,



Tim Luke
Water Allocations

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of October, 1994, I mailed a true and correct copy of the attached letter, postage prepaid, to the following individuals:

~~Vitort~~
Nolan Vitort
1528 Addison Ave E.
Twin Falls, Id 83301

Carlson Canyon Ranch
PO Box A
Burley, Id 83318

Dennis K Smith
108 W Elm St
Oakley, Id 83346

Robert Whitley
Shoulder 3 Ranches
PO Box 218
Oakley, Id 83346

Mike Poulton
Oakley, Id 83346

Carl Austin
PO Box 116
Oakley, Id 83346

Robert Whittle
614 S College Ave
Oakley, Id 83346

Don Campbell
PO Box 285
Oakley, Id 83346

Frank Bedke
Oakley, Id 83346

Oakley Canal Company
PO Box 207
Oakley, Id 83346

Morris Mitchell
Oakley, Id 83346

Bruce Bedke
Rt 1
Oakley, Id 83346

W B Whitley
307 N Center St
Oakley, Id 83346

Ray Bedke
PO Box 283
Oakley, Id 83346

Karl Bedke
Rt 1
Oakley, Id 83346

Jim Stanton
Southern Region
222 Shoshone St. East
Twin Falls, Id 83301

APR 27 1994
OAKLEY, ID
NO POSTAGE

Kris Rhodes
Kris Rhodes, Secretary
Department of Water Resources



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

LARRY ECHOHAWK
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES
STATEHOUSE, BOISE, IDAHO 83720-9000
TELEPHONE: (208) 327-7920

July 18, 1994

Don F. Pickett
Attorney at Law
Route 1, Box 80-B
530 West 1650 South
Oakley, ID 83346

RE: Goose Creek Waters

Dear Don:

Phil Rassier asked that I look into the matter raised in your letter dated June 27, 1994. Phil had earlier discussed the administration of water from Goose Creek with Water Resources' Director, R. Keith Higginson. Mr. Higginson recently talked with Robert L. Morgan, Utah State Engineer and requested that he look into the status of the administration of Goose Creek waters on the Utah side of the border. Mr. Higginson informed me that he expects to hear from the Utah people sometime in the near future.

In general, short of an interstate compact or some type of working agreement, watermasters from one state are unable to cross state lines to administer waters and enforce decrees in another state. However, in this case perhaps the Utah water department can facilitate and help enforce the provisions of the *Whittle* decree.

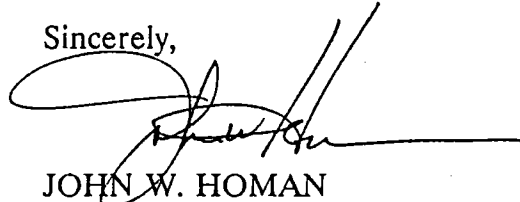
If administration of the waters on Goose Creek remains unsettled, waterusers on Goose Creek may consider filing motions for enforcement or contempt before the original (successor) court in Idaho; another alternative may be to file an original action in the Utah courts seeking to enforce the *Whittle* decree.

At this time, the canal company may want to wait and see if any action is taken by Utah in response to Mr. Higginson's inquiry.

Don F. Pickett
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Please call me at (208) 327-7924 if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Homan", with a long horizontal line extending to the right.

JOHN W. HOMAN
Deputy Attorney General
Idaho Department of Water Resources

JWH:dc

or unlawfully used.

The director may remove a watermaster who is not properly performing his or her duties. Removal must be based on written complaint from at least one water user holding a valid water right and upon an investigation by the Department. The Department must also hold a hearing with the other users of the district prior to the removal of the watermaster and appointment of a successor. (Section 42-605, Idaho Code)

C. 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.