



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098  
Phone: (208) 327-7900 FAX: (208) 327-7866

April 9, 1999

**DIRK KEMPTHORNE**  
GOVERNOR

Dave Sundberg  
Watermaster, Water District 43-B  
Box 1  
Malta, ID 83342

**KARL J. DREHER**  
DIRECTOR

Re: Response to Your Letter Dated December 14, 1998

Dear Mr. Sundberg,

This letter is a response to your letter dated December 14, 1998, which was received by IDWR on January 19, 1999. I appreciate the background information and detailed descriptions of events and issues you have provided in the letter. The matters you described are important to frame the issues, problems and challenges of distributing the flow of an interstate stream such as Clear Creek. The letter and the accompanying documents will be included in the Water District 43-B permanent file to chronicle your understanding of significant events during the 1996 to 1998 period.

Your concerns document the need for the department and the water district to refine the distribution procedures to assure the waterusers in District 43-B that the available flows are lawfully distributed in accordance with the rights to use the water. For an interstate stream, this requires insuring that the actions of the watermaster in Idaho and the water commissioner in Utah are coordinated to properly divide the water between the states and then to assure that the procedures used by the watermaster in Idaho properly distributes Idaho's share between the Idaho rightholders.

Relative to the first step, I believe that we (representatives of IDWR, UDWR, the Utah water commissioner, and you) made significant progress at the June 18, 1998 meeting at Malta to coordinate proper division between Idaho and Utah. We discussed most of the matters described in your letter in sufficient detail to allow a procedure to be drafted to assure you and the Idaho waterusers that the measurement and distribution procedures practiced in Utah will provide Idaho its authorized share of Clear Creek flows. IDWR and UDWR agreed to jointly issue the draft as a guideline coordinating the water distribution activities between the two states. You and Mr. Kempton provided input to this guideline. Lee Sim, a UDWR representative at the meeting, agreed to finalize the protocol (the term applied to the guideline) using notes that Tim Luke and I were to provide him. I left the meeting with the understanding that this protocol would be implemented for the remainder of the 1998 season and that you and Mr. Kempton would endeavor to make it work.

I was surprised to learn that you did not receive a copy of the protocol for use during the summer and did not receive it until late this winter. Enclosed is another copy. Now that you have the document, please review it and notify the department prior to the start of the irrigation season if you feel that these procedures do not adequately coordinate your actions and those of the Utah water commissioner to insure Idaho receives its lawful share of the flow.

Your concern that a recording gauge should be installed and maintained at the old USGS site has been given consideration by IDWR, UDWR and the waterusers. It is my understanding that you did not object during the June 18, 1999 meeting to the method of using the temporary weir near the old USGS site and adding upstream diversions in order to calculate the flow of Clear Creek. Tim Luke in a letter dated June 8, 1998 (copy enclosed) suggested a method for improving measurements near the old gauging site. IDWR did not pursue this matter further because we understood you and Mr. Kempton felt that the existing method of measurement was satisfactory. IDWR has not made any decision or agreement with UDWR that would preclude the possibility of using a recording device at or near the old gauging station if other methods of measuring the flow are not adequate. Mr. Luke's letter of June 8 includes the following:

“the site could not be equipped with a measuring device without a significant amount of rehabilitation work. I believe we agreed that neither state would pursue such work in the near future”.

Mr. Luke reports that he has had several conversations with the Idaho Clear Creek users and Utah regarding reactivation of this gauge site. Mr. Luke confirms that this issue was discussed during the 1996 and 1997 water meetings. He explained at both meetings that it would take time and resources to rehabilitate the gage. This means that the water users would have to contribute resources to this effort, and the states would also have to work in a joint effort. IDWR has not felt like the users are committed to restoring the old gage station or doing the construction work that is necessary to accommodate a stilling well and recording device for a new rated section. I have been advised that this matter was not raised at this year's annual water district meeting in Malta on January 15.

IDWR is willing to provide a mechanical recorder for installation at the old USGS site or provide assistance to establish a rated section and install a staff gage to improve measurement of the flow of the creek. The cost of construction of the gauging station, including the installation or modification of stilling wells is the responsibility of the water users.

Concerning the second task, that of assuring lawful distribution of Idaho's share of Clear Creek flows to Idaho waterusers, I believe that a guideline is needed to provide complete, systematic and up-to-date instructions for your use. The guideline should incorporate the relevant court orders and the department's understanding of the valid water rights. I have asked Tim Luke to draft the guideline, provide it to you and the Idaho waterusers for review and comment, and have the guideline finalized for your use this irrigation season. I believe the preparation of this guideline will be responsive to a number of the issues raised in your letter.

As a final matter, your letter includes a number of accusations that IDWR, UDWR, and their staff members have taken illegal actions to promote the interests of certain Clear Creek water users. I have reviewed these accusations with appropriate IDWR staff and find a commitment to faithfully interpret and follow state law and relevant court orders relative to distribution of Clear Creek water. Statutes and court orders can be understood in different ways by different readers. I cannot assure you that IDWR will always take positions with which you will agree, but I can assure you that the lines of communication will always be open to discuss these differences. It is not helpful to accuse the department or staff members of partiality. IDWR does not have and I think it is unlikely that any staff member has a financial or other personal interest in these matters. I encourage you to assist

IDWR staff to improve the administration of water distribution rather than accusing and criticizing several months or years after an event has occurred.

I will be happy to discuss any concerns that you have.

Sincerely,



Norman C. Young  
Administrator  
Water Management Division

cc: Allen Merritt, Southern Region  
Tim Luke, IDWR  
Water District 43-B Advisory Committee

Enclosure: Water Distribution Protocol  
Copy of Tim Luke's June 8, 1998 letter

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## **DISTRIBUTION OF THE FLOWS OF CLEAR CREEK BETWEEN UTAH AND IDAHO**

The following is from notes taken at a meeting held in Malta, Idaho on June 18, 1998. Those in attendance were Norm Young, Tim Luke, and Allen Merrit (State of Idaho); Dave Sundberg (Idaho watermaster); Lee Sim and Bob Fotheringham (State of Utah); Vern Kempton (Utah commissioner); and Mont Campbell (Utah wateruser).

### **DESCRIPTION OF WATER DISTRIBUTION PRACTICES**

The basis of distribution in Utah has been the Christensen Decree, the Johnson Decree, and the Naf Irrigation Company rules (the company shareholders divert directly from Clear Creek rather than from a main company canal, so the Utah commissioner distributes water among shareholders). The distribution of water according to these documents was described as follows:

Depending on the weather, the Utah irrigators will start using water sometime in April or early May - the creek is usually at about 3 cfs at this point. The water continues to be entirely used in Utah until the flow increases to an average of 20 cfs or more for a period of 24 hours. The Johnson decree said this flow was to be determined by adding the measurement made at the USGS gaging station with the measurements made at the diversions above the gaging station. After the gaging station was abandoned, they started determining the flow by adding the measurement taken at the "stage crossing" (Kempton's diversions) and adding it to the measurements of the diversions above the "stage crossing". In 1995, in an effort to more closely follow the decree, they began taking measurements at the "temporary weir" (just below the old USGS gaging station and near the Sundberg and Campbell diversions) and adding the diversions above the "temporary weir" to determine the flow of the creek. There are six measurements that must be made to make this determination: two Scofield diversions, two Sundberg diversions, one Campbell diversion, and the flow over the "temporary weir". It was generally agreed at the meeting that measuring the water at these points would provide an adequate representation of the flow of the creek.

After the flow reaches an average of 20 cfs, it is turned down to the Idaho water users. They use the entire flow of the creek, except the Scofield right to 0.33 cfs and the Naf I.C. right to 0.5 cfs, until they have taken a volume of 560 acre feet. The flow used to determine this volume is measured at the Idaho weir.

Once the 560 acre feet has been delivered to the Idaho water users, the flow of the creek is then split between the water users - 57% to the Idaho water users and 43% to the Utah water users. The Idaho water is measured at the Idaho weir and the Utah water is the sum of the measurements taken at each of the diversions in Utah. The sum of the Idaho weir and the Utah diversions is taken to be the total flow of the creek. The water continues to be distributed on this basis until a total of 750 acre feet has been delivered under the 57%- 43% split.

After 750 acre feet has been delivered, if the flow of the creek is still above 36 cfs the water continues to be distributed according to the 57% - 43% split. If the flow drops below 36 cfs, then the entire flow goes to Idaho for 12 days (the "12 day run") except the Scofield right to 0.33 cfs and the Naf I.C. right to 0.5 cfs. After 12 days, the water is again split between the water users in the two states according to the 57% - 43% split until the flow of the creek drops to 17 cfs.

Once the flow of the creek drops to an average of 17 cfs for 24 hours, the entire flow is

kept for use in Utah. This usually occurs in the end of July or August, however, any time the creek drops to an average of 17 cfs or below for 24 hours during the distribution season, the entire flow of the stream is kept for use in Utah.

## **PROCEDURES FOR COORDINATING THE DISTRIBUTION EFFORTS OF THE UTAH COMMISSIONER AND THE IDAHO WATERMASTER**

### **DETERMINING WHEN THE FLOW SHOULD BE RELEASED TO IDAHO IN THE SPRING**

The Utah commissioner will take measurements at the "Temporary Weir" and at the diversions above between 7:00 a.m. and 10:00 a.m. When the flow of the creek reaches 10 cfs, the Utah commissioner will begin posting each of these measurements plus the total creek flow at the Naf store by noon each day. When the creek flow reaches 12 cfs, the Utah commissioner will notify the Idaho watermaster. When the average of the current day's total creek flow and the previous day's total creek flow (based on the measurements posted at the Naf store) is equal to or greater than 20 cfs, the water will be released to Idaho. The Utah commissioner will contact the Idaho watermaster when he believes it is likely that the water will be released to Idaho the next day. Once the determination has been made that water should be released to Idaho, the Utah commissioner will immediately begin to open the control structures on the Utah diversions to release the flow downstream. He will begin at the lowest diversion on the Utah system and continue up the system until all control structures have been opened. Creek flow measurements will not be posted at the Naf store after the water has been released to Idaho.

### **DETERMINING WHEN THE 57% - 43% SPLIT SHOULD BEGIN**

After the water has been turned to Idaho, the Utah commissioner will monitor the flow of the creek at the Idaho weir. When it appears that delivery of the 560 acre feet will be completed in the next day or so, the Idaho watermaster and the Utah commissioner will coordinate with each other about the start the 57% - 43% split. The Idaho watermaster will determine when the 560 acre feet has been delivered and the split should begin.

### **REVIEW OF WATER MEASUREMENT PRACTICES IN UTAH**

At any time during the season, if the Idaho watermaster desires to accompany the Utah commissioner on his rounds, he should make arrangements with him the night before. It is anticipated that this will occur three times a season, however, more times a season will not create a problem as long as arrangements are made the night before.

There was a general consensus that because of the time of year the first and second of the procedures listed above would be implemented starting in 1999 and the third would be implemented immediately. These procedures are subject to review and may be modified from year to year as the need arises and as the Utah commissioner, Idaho watermaster, and the Utah and Idaho state officials can agree.



## State of Idaho

### DEPARTMENT OF WATER RESOURCES

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Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

June 8, 1998

Bob Fotheringham  
Utah Division of Water Rights  
1780 North Research Parkway # 104  
Logan, UT 84341

Dear Bob:

I enjoyed visiting with you and other staff members last month to inspect the old USGS gaging station on Clear Creek in Utah. During that visit I believe we agreed that this site could not be equipped with a recording device without a significant amount of rehabilitation work. I believe we agreed that neither state would pursue such work in the near future.

I think both you and I also had concerns about using the slide-in wooden weir at the diversion structure below the old gage. Specifically, the sediment island upstream of the weir appears to pose problems with the weir pool and approach velocities. The condition of the weir itself may also be a concern. I think there is also general agreement that establishing some method of measuring Clear Creek flows at or near the old gage site is important in order to be consistent with the Johnson decree. You mentioned that flows have traditionally been determined by measuring the Idaho weir and adding all of the upstream diversions.

As an alternative to rehabilitating the former USGS gage site, using the wooden weir below the old site, or relying on the traditional method of summing the Idaho weir with the Utah diversions, we discussed the possibility of rating the creek at a cross-section immediately above the Dave Sundberg diversion, next to the Scofield house. I feel this section may be suitable for the following reasons:

- 1) the former bridge abutment provides a good control section for current metering,
- 2) measuring at this site would reduce the need to measure the Sundberg diversion and the two diversions at the wooden weir in order to determine the total stream flow,
- 3) a staff gage can be installed on the bridge abutment,
- 4) metering can be done from a bridge plank that is placed across the abutment, which may be safer than wading the stream at other points.

We also discussed that a rating at this section might be completed over a fairly narrow range of flows, perhaps from about 12 cfs to 30 cfs. This would insure a rating for the flows that are of concern in the decree, i.e.; the 17 and 20 cfs rates which determine when water is split between the two states. However, it may be advantageous for users in both states if a rating is developed for a broader range of flows.

I would like to propose that representatives from both states work this summer towards developing a rating on Clear Creek for the location described above. IDWR is willing to provide one field agent to conduct or assist in current meter measurements at the site. Given the level of trust and concerns about authority to enter private lands, a Utah representative will need to be involved at all times. IDWR is also willing to prepare an initial rating table using these measurements, again, with the cooperation of your agency. The number of measurements made this year may depend on our respective schedules as well as stream flow conditions. I would suggest that we try to make four to five measurements this year.

I understand that there will be a meeting between representatives of Idaho and Utah on June 18. Perhaps this matter can be discussed in greater detail at that time. I would be happy to talk with you prior to the meeting on June 18. You may contact me at 208-327-7864, or e-mail me at [tluke@idwr.state.us.id](mailto:tluke@idwr.state.us.id).

Sincerely,

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

Tim Luke

cc: Dave Sundberg, Watermaster, Upper Raft River  
Norm Young, IDWR  
Allen Merrit, IDWR  
Lee Sim, Utah Water Rights Division