



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

May 2, 1995

PHILIP E. BATT
GOVERNOR

Kenneth E. Lyon, Jr.
Lyon & Lyon
PO Box 4866
Pocatello ID 83205

R. KEITH HIGGINSON
DIRECTOR

RE: Your letter of March 3, 1995 to Mr. Steve Clelland

Dear Mr. Lyon:

Your letter of March 3 suggests IDWR is making "arbitrary decisions" relative to the distribution of water in Water District 41. By this letter I will briefly explain the basis of IDWR's actions. For your convenience I have enclosed a copy of the document on which IDWR relied to develop its understanding of the relevant water rights. This is the arbitration award ("Arbitration"), subsequently confirmed by the District Court which serves as the functional equivalent to a decree of the water rights in Basin 41.

One of IDWR's duties is to instruct the Watermaster of Water District 41. Our instruction is based upon IDWR's understanding of both the arbitration of the water rights involved and applicable law.

Two aspects of this arbitration are important to note. First, the description of water rights includes neither the "more or less" language or a reference to "miners inches" as alleged in Mr. Spillet's letter of February 16, 1995 to Mr. Clelland. The description of some, but not all, of the water rights contains a reference to being measured "under a 4 inch pressure" but none of the other criteria needed to define a miners inch are included in the description of the water rights. For example, of the two water rights referenced in Mr. Spillet's letter, one, 41-00008, mentions the measurement technique but 41-00013 does not.

The second aspect of the arbitration to note is the following requirement:

That all water herein awarded shall be measured in a box or flume placed at the head of every ditch through which the same is to be conveyed of the length of 8 & 1/4 feet with a fall of 1/2 inch to said box the water at no time in said box to be more than 6 inches in depth at the head thereof and without pressure except the natural flow of the stream; said box to be placed on a solid foundation and constructed of 2 inch lumber...(emphasis added)

Kenneth E. Lyon, Jr.
May 2, 1995
Page 2

This box or flume will not, by its design, result in a measurement that correlates to miners inches. The arbitration goes on to specify water users will not receive water in the future unless the water users comply with the arbitration.

One possibility for instructing the watermaster is that the arbitration must be followed absolutely. That would require reconstruction of "boxes" at all diversions where "boxes" don't currently exist.

While requiring "boxes" would meet the requirements of the arbitration I can understand that some water users want to install more modern "standard" measuring devices. The question then is, how can standard measuring devices be installed and used which at the same time maintaining the status quo defined by the arbitration.

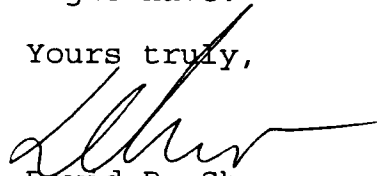
The installation and use of standard measuring devices for the delivery of water amounts from the arbitration, converted to miners inches, does not represent the status quo.

The data developed by IDWR shows the inches of water measured by the "boxes" are consistently less than miners inches. If status quo is to be maintained, "box inches" must be converted to an amount that can be measured by a standard measuring device. This conversion is addressed by Mr. Clelland's letter of February 10, 1995.

I concur with your client in desiring to get this issue resolved. I hope this letter helps explain IDWR's understanding of the status quo.

Please let me know if I can provide you with additional information or answer question you might have.

Yours truly,



David B. Shaw
Adjudication Bureau Chief

Enclosure