

OFFICE OF THE ATTORNEY GENERAL

Natural Resources Division
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RECEIVED
MAY 21 2004
DEPARTMENT OF
WATER RESOURCES

File: WD74
2004 file

MEMORANDUM

To: Phillip Rassier
Deputy Attorney General
Idaho Department of Water Resources

From: Patricia Boehm
Legal Secretary



Date: May 19, 2004

Re: Agreements Not to Divert

Enclosed for your files are three original, signed agreements not to divert for Water District 74 and 74U, Paul Fisher, and Douglas Cerise Ranch Co.

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MAY 21 2004

DEPARTMENT OF
WATER RESOURCES

**AGREEMENT NOT TO DIVERT WATER
FROM LEMHI RIVER AT L6**

This Agreement entered into by and between Water District 74 ("WD 74"), Water District 74U ("WD 74U"), and the State of Idaho through the Idaho Department of Water Resources ("IDWR"), 1301 North Orchard, Boise, Idaho 83706, and the Idaho Office of Species Conservation ("OSC"), 300 North Sixth Street, Boise, Idaho 83702, is made in reference to the following facts:

RECITALS

1. WD 74 delivers water from the Lemhi River to a ditch and point of diversion known as the L6 Ditch. WD 74U is a separate water district that is limited to delivery of water from the L6 Ditch to water right holders on the L6 Ditch.
2. IDWR, OSC, WD 74, and WD 74U desire to provide short term flushes of water below the Lemhi L6 diversion to facilitate juvenile chinook salmon and steelhead migrating between L6 and L3A.
3. IDWR, OSC, WD 74, and WD 74U desire to formally document their agreement to provide water for migrating salmon and steelhead during periods of low in stream flow.
4. OSC desires to provide funding to WD 74 and WD 74U as compensation for not diverting water for the benefit of migrating salmon and steelhead.

Now therefore, in consideration of the following promises and commitments, WD 74, WD 74U, IDWR, and OSC agree as follows:

AGREEMENT

1. Statement of Purpose

This document outlines an agreement by WD 74 and WD 74U to provide a series of four (4) hour flushes of water from 8:00 p.m. to 12:00 a.m. midnight on even numbered days beginning on April 16, 2004, through May 14, 2004, as needed, when irrigation demand and low natural in-stream flows prevent at least 25 cubic feet per second ("cfs") remaining in the Lemhi River channel below L6. These flushing flows are intended to benefit the migration of chinook salmon and steelhead between diversion points L6 and L3A.

2. Scope of Work

- A. For conservation purposes, water shall not be diverted at the L6 diversion between 8:00 p.m. and 12:00 a.m. midnight unless there are sufficient flows over the specified amount for the flush on even numbered days commencing on April 16, 2004, and continuing as needed through May 14, 2004, if normal irrigation delivery requirements reduce in-stream flow to less than 25 cfs below L6, as follows: A four (4) hour flushing flow will be provided below

L6 by removing dam boards at L6 to allow at least 40 cfs to remain in the Lemhi River channel for one hour and at least 25 cfs to remain in the channel for the remaining three hours. Upon evaluation of juvenile salmon and steelhead fish trapping information and water conditions, the frequency of flush shall be reduced at the direction of the Idaho Department of Fish and Game.

B. OSC shall pay to WD 74 and WD 74U a total sum of six hundred dollars (\$600) for each four-hour flushing event for the period specified, five hundred dollars (\$500) for WD 74U and one hundred dollars (\$100) for Rick Sager Water Master for performing the flushes, no more than a total sum of nine thousand dollars (\$9000).

3. Term

This Agreement shall take effect upon signature by the parties or on April 16, 2004, whichever occurs first, and shall continue in effect until May 14, 2004 unless terminated earlier in accordance with section 2A of this Agreement or provisions of sections IV and V of the "Standard Contract Provisions."

4. General Terms and Conditions

WD 74 and WD 74U agree to abide by all applicable terms and conditions contained in the "Standard Contract Provisions, Idaho Department of Water Resources," attached hereto as Attachment A and incorporated herein by this reference.

5. Quadruplicate Originals

This contract is executed in quadruplicate. Each of the four contracts with an original signature of each party shall be an original.

IN WITNESS WHEREOF the parties executed this contract on the date following their respective signatures.

Carl Ellsworth, Chairman
Water District 74

Carl Ellsworth
5/14/04

Date

Karl J. Dreher, Director
Idaho Department of Water Resources

Karl J. Dreher
May 14, 2004

Date

Bob Thomas, Chairman
Water District 74U

Bob Thomas

Date 5-14-04

James L. Caswell
Office of Species Conservation

James L. Caswell
5/17/04

Date

RECEIVED
MAY 21 2004
DEPARTMENT OF
WATER RESOURCES

**AGREEMENT NOT TO DIVERT WATER
FROM LEMHI RIVER AT L6**

This Agreement entered into by and between Paul Fisher ("Fisher") and the State of Idaho through the Idaho Department of Water Resources ("IDWR"), 1301 North Orchard, Boise, Idaho 83706, and the Idaho Office of Species Conservation ("OSC"), 300 North Sixth Street, Boise, Idaho 83702, is made in reference to the following facts:

RECITALS

1. Fisher owns water rights designated as nos. 74-00325K, 74-00326B, 74-00839, and 74-00324A, with priority dates of 4/1/1869, 6/9/1875, 4/1/1878, and 1/24/1877 respectively, which allow the diversion of 9.64 cubic feet per second ("cfs") of water from the Lemhi River at a diversion point known as L6.
2. IDWR and OSC desire to maintain a constant flow of water in the Lemhi River below the Lemhi L6 diversion to facilitate juvenile chinook salmon and steelhead migration between L6 and L3A.
3. Fisher, IDWR, and OSC desire to formally document their agreement to provide water for migrating salmon and steelhead during periods of low instream flow.
4. OSC desires to provide funding to Fisher as compensation for not diverting water under Fisher's water rights for the benefit of salmon and steelhead.

Now therefore, in consideration of the following promises and commitments, Fisher, IDWR, and OSC agree as follows:

AGREEMENT

1. Statement of Purpose

This document outlines an agreement by Fisher to allow 5.7 cfs of water to remain in the Lemhi River for thirty days commencing on April 15, 2004, and terminating at midnight on May 14, 2004. Maintaining water in the Lemhi River is intended to benefit the migration of chinook salmon and steelhead between diversion points L6 and L3A and habitat for aquatic biota.

2. Scope of Work

- A. For conservation purposes, Fisher shall not divert 5.7 cfs of water under water right nos. 74-00325K, 74-00326B, 74-00839, and 74-00324A from the Lemhi River for the period of April 15, 2004, through May 14, 2004.

- B. OSC shall pay to Fisher the sum of thirteen thousand seven hundred ninety-one dollars (\$13,791) as compensation for not diverting water under a portion of his water rights for the period specified.

3. Term

This Agreement shall take effect upon signature by the parties or on April 15, 2004, whichever occurs first, and shall continue in effect until midnight May 14, 2004, unless terminated earlier in accordance with the provisions of sections IV and V of the "Standard Contract Provisions."

4. General Terms and Conditions

Fisher agrees to abide by all applicable terms and conditions contained in the "Standard Contract Provisions, Idaho Department of Water Resources," attached hereto as Attachment A and incorporated herein by this reference.

5. Triplicate Originals

This contract is executed in triplicate. Each of the three contracts with an original signature of each party shall be an original.

IN WITNESS WHEREOF the parties executed this contract on the date following their respective signatures.

Paul Fisher

Paul Fisher

5-3-04
Date

Karl J. Dreher, Director
Idaho Department of Water Resources

Karl J. Dreher

May 14, 2004
Date

James L. Caswell
Office of Species Conservation

James L. Caswell for

5/17/04
Date

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MAY 21 2004

DEPARTMENT OF
WATER RESOURCES

**AGREEMENT NOT TO DIVERT WATER
FROM LEMHI RIVER AT L6**

This Agreement entered into by and between Douglas Cerise Ranch Co. ("Cerise"), and the State of Idaho through the Idaho Department of Water Resources ("IDWR"), 1301 North Orchard, Boise, Idaho 83706, and the Idaho Office of Species Conservation ("OSC"), 300 North Sixth Street, Boise, Idaho 83702, is made in reference to the following facts:

RECITALS

1. Cerise owns water rights designated as nos. 74-00826 and 74-00820 with priority dates of 3/15/1889 and 7/27/1888 respectively. Water right nos. 74-00826 and 74-00820 allow the diversion of 1.7 cubic feet per second ("cfs") and 2.62 cfs of water from the Lemhi River at a diversion point known as L6.
2. IDWR and OSC desire to maintain a constant flow of water in the Lemhi River below the Lemhi L6 diversion to facilitate juvenile chinook salmon and steelhead migration between L6 and L3A.
3. Cerise, IDWR, and OSC desire to formally document their agreement to provide water for migrating salmon and steelhead during periods of low instream flow.
4. OSC desires to provide funding to Cerise as compensation for not diverting water under Cerise's water rights to enhance instream flows for the benefit of salmon and steelhead.

Now therefore, in consideration of the following promises and commitments, Cerise, IDWR, and OSC agree as follows:

AGREEMENT

1. Statement of Purpose

This document outlines an agreement by Cerise to allow 4.3 cfs of water to remain in the Lemhi River for thirty days commencing on April 15, 2004, and terminating at midnight on May 14, 2004. Maintaining water in the Lemhi River is intended to benefit the migration of chinook salmon and steelhead between diversion points L6 and L3A and habitat for aquatic biota.

2. Scope of Work

- A. For conservation purposes, Cerise shall not divert 4.3 cfs of water under water right nos. 74-00826 and 74-00820 from the Lemhi River for the period of April 15, 2004, through May 14, 2004.

- B. OSC shall pay to Cerise the sum of ten thousand four hundred three and 73/100 dollars (\$10,403.73) as compensation for not diverting water under its water rights for the period specified.

3. Term

This Agreement shall take effect upon signature by the parties or on April 15, 2004, whichever occurs first, and shall continue in effect until midnight May 14, 2004, unless terminated earlier in accordance with the provisions of sections IV and V of the "Standard Contract Provisions."

4. General Terms and Conditions

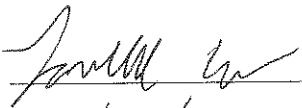
Cerise agrees to abide by all applicable terms and conditions contained in the "Standard Contract Provisions, Idaho Department of Water Resources," attached hereto as Attachment A and incorporated herein by this reference.

5. Triplicate Originals

This contract is executed in triplicate. Each of the three contracts with an original signature of each party shall be an original.

IN WITNESS WHEREOF the parties executed this contract on the date following their respective signatures.

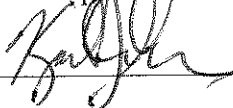
Douglas Cerise Ranch Co.



5/4/04

Date

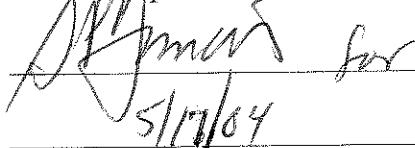
Karl J. Dreher, Director
Idaho Department of Water Resources



May 14, 2004

Date

James L. Caswell
Office of Species Conservation



5/17/04

Date