



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

National Marine Fisheries Service
10215 W. Emerald, Suite 180
Boise, Idaho 83704

September 10, 2001

RECEIVED

SEP 13 2001

Department of Water Resources

R. J. Smith
Lemhi Irrigation District
P.O. Box 65
Tendoy, Idaho 83468

RE: Fish Mortalities and Lemhi Agreement

Dear Mr. Smith:

It is obvious that special efforts are being taken during this drought year to meet the stream flows specified in the Lemhi Agreement. Recent reports of fish mortalities, however, make the point that there is little to be gained if fish are killed while parties to the Lemhi Agreement work trying to meet the agreed on stream flows. The recent mortality of juvenile chinook salmon in Lemhi River irrigation ditches, therefore, raises some serious Endangered Species Act (ESA) issues. One issue is the potential "take" of listed species as prohibited under ESA section 9. A second issue is the integrity of the Lemhi Agreement. Both these issues relate to past efforts intended to ensure that listed salmon, steelhead and bull trout will not die as a result of diverting Lemhi River water for irrigation. The potential for stranding fish was recognized by the signers of the agreement, and for this reason, ramping down procedures were included that allowed for the relocation of fish when irrigation diversions are turned off to maintain instream flows¹. These procedures were not followed when headgates were closed on LBSC-6, L-52, and L-62 and at least 26 listed fish were lost as a direct result of this failure.

National Marine Fisheries Service (NMFS) law enforcement agents, as recognized in the Lemhi Agreement, are proceeding to determine if the conditions for prosecutorial discretion apply. NMFS was notified of the incident six days after it occurred. This delayed reporting is not consistent with the intent and partnerships established with the Lemhi Irrigators and State of Idaho. The involved ditches are those where fish screens are a significant distance below the headworks, raising the risk of stranding, per section II.B.1 of the Agreement. A chronicle of events that occurred August 9 through August 11, 2001, based on information from a preliminary NMFS law enforcement report, follows:

¹The ramping down procedures also apply when diversions are turned off for reasons other than increasing instream flow, such as, normal shut down at the end of the irrigation season.



Post-It [®] Fax Note	7671	Date	9/11/01	# of pages	3
To	Ken/Skip FYI	From	Bob K... ..		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			



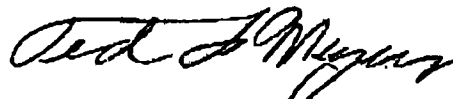
2

- On the morning of August 9, 2001, Greg Lowell (Idaho Fish and Game, (IDFG) screen shop) spoke with Rick Sager (Lemhi watermaster) via telephone. During this conversation, Mr. Sager informed Mr. Lowell of the impending closure of the LBSC-6 headgate.
- At approximately 10:00 A.M. on August 9, 2001, Mr. Lowell and Bill Runnoe (IDFG fisheries technician) went to LBSC-6 to salvage juvenile fishes stranded in the diversion ditch. Upon arriving at the diversion, they partially closed the headgate to facilitate capture of juvenile fishes. Later the same day, Rick Sager (Lemhi Watermaster) arrived and apparently closed the headgate completely.
- During the afternoon of August 9, 2001, Mr. Runnoe spoke with Mr. Sager. Mr. Sager was apparently very upset that the headgate had been manipulated and threatened Mr. Runnoe by allegedly saying "If you touch those headgates you'll be floating down the river."
- At approximately 10:57 on August 10, 2001, Mr. Runnoe went back to LBSC-6 to continue with the salvage operation. Mr. Runnoe discovered that the headgate had been closed and discovered dead juvenile chinook salmon in the ditch. Mr. Runnoe contacted Mike Larkin (IDFG fisheries biologist) who arrived at approximately 12:45 P.M. and opened the headgate sufficiently to support surviving juvenile fishes. Mr. Larkin and Mr. Runnoe found 22 dead and one live juvenile chinook salmon in the ditch. The live fish was salvaged and released outside the ditch.
- During the afternoon of August 10, 2001, Mr. Runnoe and Mr. Larkin went to L-62 and Mr. Runnoe later went to L-52, headgates of both ditches having been closed, apparently without following ramping down procedures described in the Lemhi Agreement. They found two dead juvenile chinook salmon in each ditch.
- On August 11, 2001, Mr. Runnoe went back to LBSC-6 and salvaged four juvenile chinook salmon.
- On August 15, 2001, NMFS was informed of the incident.

Please share any information you have that could help us understand the events of August 9 through August 11. We also request your suggestions for improving the future real-time notification of situations not consistent with those envisioned in the agreement, reducing tension between all parties involved with headgate closures and ramping down actions, eliminating threats of physical violence, improving ramping down communications and procedures, and continuing the effort to keep agreed to flows in the Lemhi River. It is imperative that these issues be resolved as soon as possible as the end of the irrigation season is drawing near and many diversions are likely to be turned off during a short time period, potentially stranding many listed fishes.

Don Anderson and I are available to come to Salmon to discuss these issues. Please advise.

Sincerely,



Theodore F. Meyers, Chief
Idaho Habitat Branch

- cc:
- A. Badgy - USFWS
 - J. Caswell - Idaho Office of SC
 - T. Curet - IDFG
 - D. Darm - NMFS
 - K. Dreher - IDWR
 - D. Mignogno - USFWS
 - V. Don Olsen - USBWP
 - R. Sanders - IDFG
 - C. Strong - Idaho AG Office