



**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

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

October 24, 1994

VIA FACSIMILE TRANSMISSION

Michael A. Gheleta, Attorney  
General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street Suite 945  
Denver, Colorado  
FAX No. (303) 294-1931

Dear Mr. Gheleta:

The Idaho Department of Water Resources (IDWR) hereby acknowledges receipt of your letter of October 21, 1994, which both requests IDWR to administer the state law based water rights out of the Len Lewis Spring and objects to such administration "to the extent that IDWR seeks authority beyond the scope of the waiver of sovereign immunity [sic] contained in the McCarran Amendment, 43 U.S.C. 666."

IDWR also takes due note, but does not concede it necessary, of the point you emphasize that as a matter of comity the United States is "allowing" IDWR to enter onto Hatchery property in order to respond to the United States' request for administration of the water rights in question.


Please be advised of the following:

1. Pursuant to its statutory authority, and in response to the request of the United States, IDWR will direct the local watermaster to distribute water in accordance with the prior appropriation doctrine by adjusting the outlets from the Len Lewis Spring in accordance with the parties' respective priorities under Idaho law, should IDWR determine that such adjustment is necessary.
2. To this end IDWR will request the watermaster to make himself available (and will make available whatever staff are necessary) to meet with the water users on short notice within the next few days at a mutually agreed-upon time to assess the situation on the ground and make such adjustments as may be necessary to assure that the rights in question are delivered in accordance with Idaho law. It is my understanding that the meeting has been arranged for tomorrow morning.

Mr. Michael A. Gheleta  
October 24, 1994  
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3. It is IDWR's position that it has authority under Idaho law, and within the ambit of the McCarran Amendment, to administer state law based water rights held by the United States.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Lynne Krogh".

Lynne Krogh, Deputy Attorney General  
Department of Water Resources



## U.S. Department of Justice

## Environment and Natural Resources Division

General Litigation Section  
Denver Field Office

Michael A. Gheleta, Esq.  
999 18th Street  
Suite 945  
Denver, CO 80202  
Telephone: (303) 294-1900  
Telecopier: (303) 294-1931

Final

## TELEFAX COVER SHEET

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Date: October 21, 1994  
From: Michael Gheleta, Attorney  
General Litigation Section  
To: Lynne Krogh, Esq.  
Deputy Attorney General - IDWR

Phone: (208) 327-7928

Telefax No.: (208) 327-7866

No of pages, including cover sheet: 3

Case/Matter: Distribution of Water from Len Lewis Spring

Message:



WMC:MAGheleta

## U.S. Department of Justice

## Environment and Natural Resources Division

General Litigation Section  
Denver Office

Michael A. Gheleta, Attorney  
Suite 945, North Tower  
999 Eighteenth Street  
Denver, CO 80202

Telephone No. (303) 294-1900  
Telefacsimile No. (303) 294-1931

October 21, 1994

VIA FACSIMILE

A. Lynne Krogh, Esq.  
Deputy Attorney General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098

Final  
Version

Re: Distribution of Water from Len Lewis Spring

Dear Ms. Krogh:

This letter concerns recent developments pertaining to the distribution of water from Len Lewis Spring. As you are aware, under the SRBA Court's May 27, 1994 Order, IDWR may continue to perform statutory duties and communicate with parties regarding the distribution of water in accordance with the prior appropriation doctrine and the administration of water rights. We believe that certain parties have recently entered onto federal property at the Hagerman National Fish Hatchery, and, without permission, unilaterally adjusted the flow from Len Lewis Spring to increase diversions down the Brailsford Ditch. Such unauthorized entry onto federal property constitutes a trespass and a wrongful interference with a ditch or headgate, and could result in legal action against these parties.

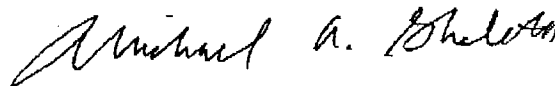
In light of the above situation, it is our understanding that IDWR will be directing Watermaster George Lemmon to distribute water in accordance with the prior appropriation doctrine by adjusting the outlets from Len Lewis Spring pursuant to the parties' respective water rights and actual beneficial uses. With respect to actual beneficial uses, it is noteworthy that, as stated in the Hatchery's October 14, 1994 letter to the Watermaster, Hatchery staff observed that most of the water flowing down the Brailsford Ditch during the week of October 10 was being spilled into the Hagerman Wildlife Management Area spillgate and was not being beneficially used by the Brailsford Ditch users for irrigation, stock or other purposes.

A. Lynne Krogh, Esq.  
October 20, 1994  
Page Two

We hope that the proposed action by IDWR and the Watermaster will satisfactorily resolve the current situation. It is imperative that the adjustment proposed occur within the next few days, as soon the Watermaster and a representative of IDWR, the Hatchery and the Brailsford Ditch users are able to arrange a time at which all can be present. It must be emphasized that the United States is allowing IDWR onto Hatchery property this year to administer the state law-based water rights involved as a matter of comity. The United States objects to administration of federal water rights by IDWR to the extent that IDWR seeks authority beyond the scope of the waiver of sovereign immunity contained in the McCarran Amendment, 43 U.S.C. 666.

We appreciate your cooperation in this matter.

Sincerely,



Michael A. Gheleta, Attorney



U.S. Department of Justice

Environment and Natural Resources Division

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Denver Field Office

Michael A. Gheleta, Esq.  
999 18th Street  
Suite 945  
Denver, CO 80202  
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From: Michael Gheleta, Attorney  
General Litigation Section  
To: A. Lynne Krogh  
Deputy Attorney General - IDWR

Phone: (208) 327-7928

Telefax No.: (208) 327-7866

No of pages, including cover sheet: 2

Case/Matter: Distribution of Water from Len Lewis Spring

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Michael A. Gheeta, Attorney  
Suite 945, North Tower  
999 Eighteenth Street  
Denver, CO 80202

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VIA FACSIMILE

A. Lynne Krogh, Esq.  
Deputy Attorney General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098

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We appreciate your cooperation in this matter.


Sincerely,



Michael A. Gheleta, Attorney



## MEMORANDUM

To: File — ①:st 36A  
From: Scott K. 

Date: October 24, 1994

Subject: Len Lewis Spring/Brailsford Ditch developments

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The attached letter addressed to Lynne Krogh from U.S. Department of Justice Attorney Michael A Gheleta is a result of recent developments occurring in Hagerman.

A history of problems exists between Brailsford Ditch users and the National Fish Hatchery. These problems surface each spring and fall when demand on the Brailsford Ditch is low.

This one developed a week or two ago when rains compelled the Ditch users to reduce water use. Instead of adjusting the headgate at the source, they spilled the water at the Wildlife Management Area (WMA) (which has historically been common practice, and was probably preferred by the last hatchery manager). After a week of spilling, the National Fish Hatchery manager (Brian Kenworthy) adjusted the headgate after giving the watermaster (George Lemmon) very short notice.

Kenworthy's action prompted disagreements between the Ditch users and the National Fish Hatchery. Gheleta then submitted the attached letter to our office. The apparent intent is for IDWR to assemble a meeting between Hatchery representatives, Ditch users, and the watermaster. Ideally, George Lemmon will help construct a resolution that both parties can live with. Lack of communication appears to be the greatest problem.

A meeting has been scheduled at Frog's Lillypad for 9:00 am, Tuesday, September 25, 1994. Steve Clelland, George Lemmon, and I plan on attending. Representing the hatchery are Brian Kenworthy and either Randy Smeller or Kathy Clemens. Bill Brailsford and John Mavencamp will represent Brailsford Ditch users. David Parrish of Fish & Game may also attend.