



State of Idaho

DEPARTMENT OF WATER RESOURCES

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To: Norm Young, c/o Pony Soldier, Lewiston

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GOVERNOR

KARL J. DREHER
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Norm:

It's 5:02 our time and I just got off the phone with Bill Brock of the Times News. He is still working on the Billingsley Creek water call story. He has asked some questions the answers to which need to come from you because they speak to policy as well as substance.

He needs for you to call him at the paper. The number is (208) 733-0931, ext. 264. He will be there until 5:30 Lewiston time tonight (6:30 TF time). If you miss him, please call him tomorrow after 10 a.m. Mountain Time (9:00 a.m. your time).

His questions deal with the following:

1. Tupper is saying we granted some kind of extension so he could continue to use the water regardless of the Show Cause order. Is that so?
2. George Lemmon says he will not cut back the Tupper right until IDWR reads the sale agreement that exists between Tupper and Ellis. What about that?
3. Lemmon says the 1932 decree granting irrigation and "other uses" is the only legally binding rule he has to follow. Our reaction?
4. Just how much latitude does a Watermaster have? Does he have to do what we say or can he simply follow his own interpretation of the entitlement (i.e. the decree version versus the department version).
5. Is this Billingsley Creek thing likely to lead to some wide water conflict which might provoke a call against the groundwater users who pump from the aquifer that feeds the spring (is another Musser deal in the making)?

Karl was gone, Spackman in Pocatello, Glen was gone so no one here can really help. I just figure it's the kind of question that need to be answered by you or Karl. So I told Brock you were in Lewiston and that I would make the arrangements I indicated above. Let me know if there is anything else I can do.

Dick Larsen

DICK LARSEN

Water call puts watermaster, state at odds

By William Brock
Times-News writer

HAGERMAN - A local spring-water user has asked state officials to shut off a nearby, junior water permit holder - but the local watermaster says he takes his marching orders from a 64-year-old federal decree, not the Idaho Department of Water Resources.

Moreover, the call for water has generated a deadline for Hagerman Watermaster George Lemmon to curtail other water rights - including one of his own - that are used for fish farms.

Simply put, the 1932 federal decree says Hagerman water users can divert water for any beneficial purpose - anytime they want. That collides with Water Resources' policy, which claims authority over how, and when, water can be used.

Some fish farmers have water permits specifying that the water be used for year-round fish propagation, but others don't. Water Resources is willing to let fish farmers with non-specific water permits use Billingsley Creek water - as long as the water also is used for irrigation.

When Water Resources says the irrigation season is over, then Lemmon will be ordered to shut-off fish operations - including one of his own - that don't have fish propagation rights to water from Big Spring, Billingsley Creek or its tributaries.

The order stems from a dispute that began in April, when Ken Ellis - doing business as Aqua Life Inc. - wrote to Water Resources. Ellis demanded that junior water users, including Robert Tupper, be shut off in order to fill his own, older water permits.

Water Resources ordered Lemmon to shut

off two of Tupper's water rights and limit delivery of a third to no more than 0.6 cubic feet of water per second. Tupper, 76, owns a trout and sturgeon operation that's been leased out to a contract operator.

"I've used that water for fish for 17 years," Tupper said. "I had a water right before Ellis ever came around."

Ellis countered that his fish water right is 20 years older than Tupper's, but Tupper is getting more than the 1 cfs he's entitled to while Ellis is getting less than his 4 cfs. Water Resources confirmed Ellis' charge in a series of field investigations earlier this year.

"Over the years, he's been taking more and more of it," Ellis said.

Lemmon - who has been Hagerman watermaster for 40 years - said he won't cut Tupper off until Water Resources considers additional information. Until then, Lemmon

insisted the 1932 federal decree provides his only legally binding guidance.

Karl Dreher, director of Water Resources, said he'll hear Lemmon out, "but in the end, he is an employee - and there is a relationship between employers and the employee.

"In the end, I'm the one who has to make the final interpretation," Dreher said in a telephone interview Thursday. "Sometimes those decisions are based on other information that George doesn't have" - including advice from a battery of lawyers.

Dreher said Lemmon was ordered to give Tupper a few days' advance warning before shutting down the two disputed water rights. Further, Tupper has until May 10 to convince Water Resources why

Please see WATER/C3

Water

Continued from C1

he shouldn't be curtailed, Dreher said.

The Ellis-Tupper dispute ultimately could expand from a one-on-one confrontation into a general call for water against a newly formed groundwater pumpers' association, Lemmon warned.

"It seems like the frustration of people will escalate as there gets to be more people and not everyone understands what the situation is," Lemmon said.

Dreher said the possibility always exists for a delivery call against groundwater pumpers, "but to worry if this will lead to a general call on the aquifer is speculative, at best."

Spring flows in the Hagerman area are increasing slowly, Dreher said, adding that groundwater pumps are one - but not the only - cause for diminished spring flows.

Wendell-area pumper Tom Ambrose said he and other pumpers are keeping a wary eye on water squabbles in the Hagerman area.

"We'll obviously watch it with some concern," said Ambrose, who is leading a nascent effort to create a local groundwater pumping district.

Collectively, groundwater pumpers irrigate 1.2 million acres of southern Idaho cropland, so they can command a lot of resources - and options - if someone comes after their water, Ambrose said.