

MEMORANDUM

TO: Gary Spackman

FROM: Tim Luke

DATE: 11/16/1996

RE: Calls for Water by Aqualife

Ken Ellis visited the office yesterday and said that he will be renewing his calls on Billingsley Creek, Big Spring, and Tupper Springs. He said his attorney, Tom Arkoosh, will probably submit something in writing by November 22. He feels that the Department will not take his calls seriously unless he is represented by an attorney.

The Big Spring call mainly involves George Lemmon's use of water for a fish hatchery and the fact that in our opinion, he has no water right for fish propagation from this source. As it is now past November 15, I wonder if we should investigate this use or contact George directly and inquire about what he intends to do about this matter. Depending on our findings and/or his response, we may need to issue a cease and desist order. Although I will be gone next week, I think we should initiate some contact with George as soon as possible. I don't think we need to wait for the renewed call to take action on George's use. The Big Spring call will also effect Billingsley Creek Ranch, who has a fish propagation use right with a priority later than Aqualife.

Ellis has made no progress with Mr. Tupper regarding the past call and use of Tupper Springs. After getting the renewed call, I think we will have to go back to our position in the show cause order of April 25, 1996 (i.e.; curtail Tupper to 0.6 cfs and ask for written response why the use should not be further curtailed). George Lemmon believes that a 1957 warranty deed which reserved 1 cfs of water entitles Tupper to divert this 1 cfs plus his 0.6 decreed right, totaling 1.6 cfs. At a meeting between Tupper, Ellis, Norm and I last May, we agreed to leave the diversion at 1.6 cfs. I have checked this diversion twice in the past two weeks and measured a diversion of 2.2 cfs on each occasion. The diversion has consistently measured above 1.6 cfs since early June. Ellis has researched this warranty deed and other records and does not believe that Tupper has any right to divert water ahead of Aqualife's. I can not find a copy of the 1957 deed in my records (Norm may have it), and have written Ellis and asked to provide us a copy.

The call on Billingsley Creek will mainly effect the Curren Ditch. My checks of this diversion in the past two weeks shows this diversion taking virtually the entire flow of Billingsley Creek, about 36 cfs. My interpretation of the rights for this ditch is that it should now be limited to no more than 20 cfs for fish use, and perhaps some additional amount for stock use. The fish and aesthetic rights owned by Buckeye Farms are junior to Aqualife's right on Billingsley Creek. Upon receiving the renewed call, the ditch may need to be curtailed to no more than that needed for stock use.

*cc: Allen Merritt
Scott King*