



State of Idaho

DEPARTMENT OF WATER RESOURCES

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October 20, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

David Huff
Vice President
Aquarious Aquaculture
2674 Norwood Road
Hagerman, ID 83332

VIA CERTIFIED MAIL

Re: Distribution of Water to Water Rights Nos. 36-07092b, 36-07159, and 36-07160

Dear Mr. Huff:

This is in response to your letter dated October 7, 2003, which was received in my office on October 17, regarding the administration of water rights junior in priority to water rights no. 36-07092B for 10 cfs (priority date of November 6, 1969), no. 36-07159 for 10 cfs (priority date of February 18, 1971), and no. 36-07160 for 2.64 cfs (priority date of February 18, 1971). The spring flow available for these rights is allocated to the rights in order of priority. To the extent that the more junior right(s) are not receiving the full quantity of water authorized under the right(s), and since there are no surface water rights that are junior in priority to the listed rights that divert from the same source as the listed rights, your request for water rights administration will be treated as a call for water delivery under the "Rules for Conjunctive Management of Surface and Ground Water Resources" (IDAPA 37.03.11) ("Conjunctive Management Rules"). The rules are available at the following website:

<http://www2.state.id.us/adm/adminrules/rules/idapa37/0311.pdf>

These rules prescribe how IDWR is to respond to a call for water delivery made by a holder of a senior priority surface or ground water right. Rules 40 and 30 of the Conjunctive Management Rules prescribe procedures for responding to delivery calls against junior priority ground water rights that are and are not within a water district where ground water regulation is included in the function of such districts, respectively.

With this letter, I am initiating a response to your delivery call as against junior priority ground water rights in Water Districts Nos. 120 and 130, the only water districts over the Eastern Snake River Plain Aquifer (ESPA) upgradient from the Thousand Springs area within which ground water regulation is included. If you wish to have your delivery call applied against junior priority water rights from the ESPA that are not in Water Districts Nos. 120 or 130, you will need to follow the process outlined in Rule 30 of the Conjunctive Management Rules.

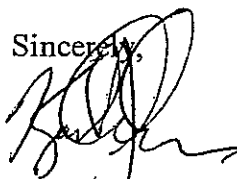
In responding to your calls for water delivery under Rule 40 of the Conjunctive Management Rules, I must first make findings that material injury is occurring and determinations of reasonableness of water diversions under the listed water rights, as provided in

Rule 42 of the Conjunctive Management Rules. I do not have sufficient information to make the findings required by Rules 40 and 42 of the Conjunctive Management Rules. Therefore, I will need certain additional information as follows:

- (1) The amount of water available to supply the listed water rights from the surface water sources from which the right is diverted;
- (2) The configuration of diversion works used to divert water under the listed water rights;
- (3) The amounts of water being diverted at the present time as well as the amounts of water historically diverted under the listed water rights;
- (4) The configuration of water measuring and recording devices used to measure the quantity of water diverted under the listed rights; and
- (5) The potential for supplying water to the listed rights by implementing alternate reasonable means of diversion or alternate points of diversion.

Developing the above information will require site visits by the watermaster for Water District No. 36A, the watermaster for Water District No. 130, and at least one or two other employees of IDWR. Please contact Cindy Yenter, the watermaster for Water District No. 130, at the Department's offices in Twin Falls (telephone no. 208-736-3033) as soon as possible to schedule the site visits. In addition, please provide me with all historical records of the amounts of water diverted under the listed rights as soon as practicable.

Sincerely,



Karl J. Dreher
Director

- c: Cindy Yenter – Water District No. 130 Watermaster
Lewis Rounds – Water District No. 120 Watermaster
Frank Irwin – Water District No. 36A Watermaster
Tim Luke – IDWR
North Snake Ground Water District
Magic Valley Ground Water District
Aberdeen-American Falls Ground Water District
Bingham Ground Water District
Bonneville-Jefferson Ground Water District