



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

January 30, 2009

David Huff, Vice-President
Aquarius Aquaculture
2674 Norwood Rd.
Hagerman, Idaho 83332

Re: Distribution of Water to Aquarius Aquaculture Hidden Springs Hatchery

Dear Mr. Huff:

I have reviewed your correspondence of January 13, 2009, which was received by the Idaho Department of Water Resources ("IDWR" or "Department") on January 21, 2009. Your letter requests administration of water rights pursuant to Idaho Code, Title 42, Chapter 6. Our records show that you made similar requests to the Director of IDWR via correspondence dated October 7, 2003 and November 8, 2006. I have also reviewed the response to your October 7, 2003 correspondence by former IDWR Director Karl Dreher, dated October 20, 2003. Director Dreher's response indicated that your request for water rights administration would 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 Department continues to view your original request and your requests of January 13, 2009 and November 8, 2006 as a call for delivery under the Conjunctive Management Rules.

Director Dreher's response of October 20, 2003 notified you that additional information was needed to make certain findings required by the Conjunctive Management Rules. That letter also advised you that developing this additional information would require a site visit by the watermasters of Water Districts 36-A and 130, and several other Department employees. You were asked at that time to contact Water District 130 Watermaster Cindy Yenter to arrange the site visit referenced in Director Dreher's response. You were also asked to provide the Director with all historical records of the amounts of water diverted under your water rights. Our records do not indicate that the site visit occurred or that you contacted Ms. Yenter to arrange the visit. Our records also do not indicate that you submitted the historical diversion records requested by the Director. Our records further indicate that the Department did not respond to your delivery call letter of November 8, 2006. I wish to apologize for that lack of response by IDWR.

On May 19, 2005, the Department issued an order in response to the Rangen water right delivery call. See Second Amended Order in the Matter of Distribution of Water Rights Nos. 36-15501, 36-02551 and 36-07694, which is available on line using the following link:

http://www.idwr.idaho.gov/Calls/Spring%20Users%20Calls/SU_previous_archives.htm#Orders

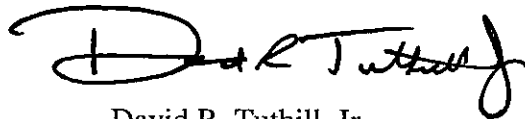
Letter to David Huff
January 30, 2009
Page 2

This order addressed the delivery of Rangen's July 13, 1962 priority spring water right pursuant to the Conjunctive Management Rules against junior ground water rights in Water Districts 120 and 130. Rangen's 1962 priority water right is diverted within the same spring reach of the Eastern Snake Plain Aquifer (ESPA) as your 1969 and 1971 priority water rights. IDWR denied Rangen's delivery call based on findings that curtailment of junior priority ground water rights in Water Districts 120 and 130 would not significantly affect the quantity of water available to Rangen's 1962 priority right.

I believe the Department's prior decision in the Rangen delivery call essentially renders your delivery call moot. However, I also believe that the Department must address your most recent request in accordance with the procedures of the Conjunctive Management Rules. The Department therefore should proceed with developing the additional information that it sought to obtain through the site visits that were requested by Director Dreher's letter of October 20, 2003. Some of the information requested by that notice can be obtained or verified through the site visit and through existing Department records. Water measurement records for your facility and on file at the Department are for the period of March 1, 1995 through December 31, 2007. Neither IDWR nor Water District 130 has your 2008 water measurement report, and no data exists in our records prior to March 1, 1995 other than perhaps several miscellaneous measurements that may have been made when your rights were licensed by IDWR.

Please contact Cindy Yenter, the watermaster for Water District No. 130 at the Department's Twin Falls office (208-736-3033) as soon as possible to schedule the site visits. Also, as requested in Director Dreher's prior correspondence to you on October 20, 2003, please provide me with all historical records of the amounts of water diverted under the water rights identified in your delivery call as soon as practicable.

Sincerely,



David R. Tuthill, Jr.
Director

Cc: Cindy Yenter, Water District Nos. 130 and 140 Watermaster
Frank Irwin, Water District No. 36-A Watermaster
Gary Spackman, IDWR Water Management Division Administrator
Tim Luke, IDWR Water Distribution Section
Brian Patton, IDWR Water Planning Bureau
North Snake Ground Water District
Magic Valley Ground Water District
Southwest Irrigation District



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

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.

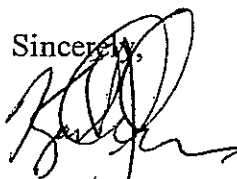
In responding to your calls for water delivery under Rule 40 of the Conjunctive Management Rules, I must first make findings that material injury is occurring and determinations of reasonableness of water diversions under the listed water rights, as provided in

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

RECEIVED

OCT 17 2003

Department of Water Resources

Aquarious Aquaculture
2674 Norwood Rd.
Hagerman, Idaho 83332

October 7, 2003

To: Karl Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706

Re: Delivery of Water

Dear Mr. Dreher:

Water right numbers:	<u>Number</u>	<u>C.F.S.</u>	<u>Priority Date</u>
	36-07160	2.64	2-18-71
	36-07159	10	2-18-71
	36-07092B	<u>10</u>	11-6-69
		22.64	

are entitled to delivery of 22.64 c.f.s from Hidden Springs for fish propagation. Today the facility that utilizes these water rights is receiving less than 50% of the water entitled by these rights from the spring source.

Demand is hereby made that you direct the Water master to administer water rights required by Idaho Code § 42-607 in order to supply this prior right.

Sincerely,



David Huff
Vice President
Aquarious Aquaculture

Karl

AQUARIUS AQUACULTURE
2674 NORWOOD RD.
HAGERMAN, IDAHO
83332
208-837-9032

RECEIVED
NOV 14 2006

*This letter from WR back file
was not submitted by
man-Huff w/ his 1/13/2009
letter.*

November 8, 2006

Karl J. Dreher, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

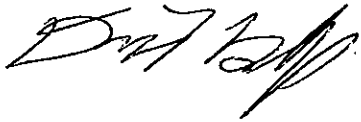
Re: Water Call and Request For Administration

Dear Director Dreher:

Please consider this letter to be your formal notice that Aquarius Aquaculture is (once again) making a water call and requesting your department to do whatever is necessary to deliver water to the points of diversion for water right numbers 36-07160 (2.64cfs-priority 02/18/1971), 36-07159 (10cfs-priority 02/18/1971 and 36-07092B (10cfs-priority 11/06/1969). We are entitled to delivery of 22.64 cfs from Hidden Springs for fish propagation. Today, the facility that utilizes these water rights is receiving less than 50% of the water entitled by these rights from the spring source. Any water that can be returned to our points of diversion will be put to beneficial use under the terms and conditions of our decrees.

Demand is hereby given that you direct the Water Master to administer water rights required by Idaho Code 8 42-607 in order to supply this prior right.

Sincerely,
David Huff
Vice President
Aquarius Aquaculture



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS.

1997 DEC 30 AM 9: 41

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 36-07160

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: AQUARIUS AQUACULTURE INC
2053 MONTANE DR
GOLDEN CO 80401

SOURCE: SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 2.64 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 22.64 CFS AND THE TOTAL COMBINED
FACILITY VOLUME OF THESE RIGHTS IS LIMITED TO 3.97 AF.
OTHER RIGHT NOS.: 36-07159 AND 36-07092B.

PRIORITY DATE: 02/18/1971

POINT OF DIVERSION: T07S R14E S18 LOT 1 (SNNWNW) Within GOODING County
LOT 2 (NWSWNW)
LOT 2 (SWSWNW)
LOT 2 (SESWNW)
LOT 3 (NENNSW)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	11-01 04-01	2.64 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County
T07S R13E S13 SENE
R14E S18 SWNW

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication