



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

January 15, 1997

George Lemmon
1050 E. 2727 South
Hagerman, ID 83332

Re: Billingsley Creek Ranch Water Use from Big Springs

Dear George:

I have tried to contact you several times over the past few days but could not reach you. Attached to this letter is a signed agreement between Donnie McFadden of Billingsley Creek Ranch (BCR) and Ken Ellis of Aqualife whereby Aqualife consents to allow BCR to continue to divert water from Big Springs for the remainder of the non-irrigation season.

Our prior direction to you regarding BCR's use of Big Spring was that we would notify you on or before January 13 as to whether curtailment or regulation of this use was necessary. Based on the attached agreement, curtailment of BCR's use for fish propagation is not necessary. However, the total diversion from Big Springs by BCR for fish propagation and recreational/aesthetic ponds should not exceed 2.04 cfs.

In a related matter, I passed through the Hagerman area on January 13 and looked at the head of the Curren Ditch. I noticed that this diversion had not been adjusted to the 20 cfs non-irrigation rate as directed by our letter of December 17. The ditch was diverting about 32 cfs. I pulled one board on the ditch which lowered the diversion rate by several cfs. Lack of time and an appointment in Jerome prevented me from spending further time at this site. If there is some reason why you have not adjusted this diversion as per our instructions, please advise us as soon as possible. If you can not make the adjustment as directed, then the Department will return to complete the adjustments. This may be done on my next visit, which may be as early as January 16 or 17.

Also, we do thank you for your cooperation in curtailing your



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GEORGE LEMMON
1050 E 2727 SOUTH
HAGERMAN ID 83332

Re: Your Correspondence of January 19

Dear George:

Enclosed is a copy of the McFadden-Aqualife agreement which I did not include with my last letter.

I am not sure the Department can be held liable for problems which have developed on the Big Spring pipe. You indicate that the curtailment of your use and the City of Hagerman pumping has created a leak in the pipe. I am curious how this system operated before you installed your hatchery. Would there not have been a lower amount of water in the pipe at that time which could have created the same problem. Moreover, has the City changed its system of diverting water from the pipe in such a way that has caused the vacuum effect which you described. I am aware that the water tank and pumping plant just west of 2700 road is relatively new. I don't know the answers to these questions but perhaps they should be considered.

In regard to Curren Ditch, our past correspondence to you explained that Aqualife's diversion from Billingsley Creek, when delivered, should be limited to 100 cfs, not 150 cfs. The 100 cfs is authorized under licensed right 36-02734. The 50 cfs water right is a statutory claim. As was explained to you in our letter of December 17, 1996, since the statutory claim is not a decreed, licensed or permitted right, it is to be delivered **last** behind all other decreed, licensed or permitted water rights, regardless of priority.

I am now aware that Aqualife had not stocked fish for the Billingsley Creek diversion prior to my letter of January 15. However, I don't believe that this is really the issue. Our December 17 letter directed you to regulate the Curren Ditch by limiting Buckeye Ranch to 20 cfs, as is authorized by their water rights, 36-07742 & 36-08730. We recognize that there are stock uses from the Curren Ditch, including Spring Valley Ranch, which we said were entitled to at least 1.64 cfs for winter stock. I have

no record of other rights or claims for stock water from Billingsley Creek diverted to the Curren Ditch. Our direction to you to limit the flow at the headgate of the Curren Ditch did not really depend so much on what Aqualife was doing, but that the rate of diversion to this ditch exceeded the winter rate authorized by the water rights.

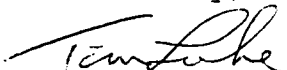
The other stock uses from the Curren ditch actually have water rights from Weatherby Springs and are diverted via the Bar-S Ditch, which dumps into the Curren Ditch. I have reviewed the SRBA stock claims (claims filed by water users) and found that they claimed a combined diversion of just over 3 cfs (3.11 cfs). I measured the discharge over the weir to the Bar-S on January 13 and found a diversion rate of about 3.3 cfs. I think that the Bar-S diversion is reasonable based on the claimed amounts and would not recommend adjusting that flow.

I believe a problem that exists on the Curren Ditch is that the split between the north and south pipe lines is not done correctly. I looked at this situation on January 17 with representatives of Spring Valley Ranch. I think the north pipe line can get sufficient stock water if this split is managed better. I believe that the 3 cfs from the Bar-S, plus about 2 cfs for stock water from the Curren Ditch delivered at the head from Billingsley Creek, can for the most part be delivered to the north pipe line. Mac Knight thought that they needed about 4 to 5 cfs for maintaining stock and the north pipe line.

Finally, I think your comment that IDWR has licensed water rights for the maximum amount is correct. However, most of the water rights in the Hagerman Valley are decreed rights where the rates of diversion were determined by the court. The licensed rights are junior to the decreed rights. You make a good point that this maximum rate could not always be delivered at times of the year, even when the original applications were permitted or licensed. Perhaps your point is that the maximum licensed rate could not always be delivered during the non-irrigation season.

Thanks for your comments and updates.

Sincerely,


Tim Luke