

WD 130 file

**RINGERT
CLARK**
CHARTERED
LAWYERS

February 10, 2004

TRANSMITTED BY FACSIMILE

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Re: Proposed Additional Curtailments of Clear Lakes Trout Company's Water Rights

Dear Mr. Dreher:

From discussions with the management at Clear Lakes Trout Company, we understand that watermaster Cindy Yenter intends to curtail Clear Lakes' diversions of water from the springs it shares with Clear Springs Foods, Inc. by approximately 6 cfs on Friday, February 13, 2004. Ms. Yenter verbally informed Clear Lakes' management of her intent to curtail on Friday, February 6, 2004, and apparently stated that there is no requirement to provide any notice whatsoever prior to further curtailing Clear Lakes' diversions. Ms. Yenter's representation is in conflict with the Watermaster Instructions under which she operates.

The June 13, 2002 Amended Watermaster Instructions for Distribution of Water Among Water Rights Nos. 36-02659, 36-02708, 36-07004, 36-7201 and 36-07218 sets forth the procedure under which the Watermaster is to administer the rights:

2. The watermaster is not to adjust the 6-ft adjustable weir unless . . . Clear Springs calls for distribution of water to its water right 36-02708.

* * *

4. IDWR and the watermaster must determine that when a call is made, water is needed under the senior priority water right making the call and that if additional water is distributed to the calling senior right, the water will be applied to the beneficial use authorized under the calling right.¹

To accomplish this determination, the Amended Watermaster Instructions specify that the watermaster must schedule a time to ascertain the amount of water flowing from the springs, and the need to distribute the rights based upon priority. To our knowledge, no call for distribution of

¹ Clear Lakes does not agree that any call made by Clear Springs is in fact a call by the "senior right" diverting water from the springs.

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water has been made by Clear Springs, and neither IDWR nor Ms. Yenter has determined that either that Clear Springs needs the water or that such water will be applied to the beneficial use authorized by its calling water right. Additionally, Ms. Yenter has not contacted Clear Lakes to schedule a time to ascertain the quantity of water flowing from the springs, and the need to distribute the rights based upon priority.

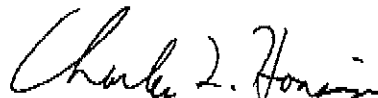
The Amended Watermaster Instructions also provide for further procedure before adjustment of the weir:

5. As soon as the need for water under the calling senior right can be confirmed, IDWR and/or the watermaster will provide the holder of the junior priority water right or rights with 14-day notice by personal service to the water right holder, or the facility manager for the water right holder, and by mail or facsimile, if available, that the watermaster will adjust the 6-ft adjustable weir.²

Clear Lakes has not received any notice specifying that its water right diversions will be curtailed within a 14 day period. Such a notice is essential to Clear Lakes because it needs time to determine what it will do with the fish that would otherwise be left without water when curtailment occurs. Obviously, the procedures in the Amended Watermaster Instructions are designed to give the parties the ability to modify their operations prior to administration so as to minimize loss. The Watermaster's proposed curtailment outside of those procedures undercuts the procedures' purpose, and further injures our client.

We insist that the procedures you have set in place be followed prior to administration of the water rights addressed by the Amended Watermaster Instructions.

Sincerely,



Charles L. Honsinger

cc: Kay Hardy

²Clear Lakes does not agree that the administration proposed by IDWR will result in curtailment of Clear Lakes' junior water right 36-07004. Instead, Clear Lakes maintains that the proposed administration will result in curtailment of its senior water right 36-02659.

Watermaster Instructions

1. Water for Clear Springs' water right 36-07201 is to be distributed separately as being from a separate "source" from the "source" for water rights 36-02659, 36-02708, 36-07004, and 36-07218.
2. The watermaster is not to adjust the 6-ft adjustable weir unless Clear Lakes calls for distribution of water to its senior priority water right 36-02659 or Clear Springs calls for distribution of water to its water right 36-02708, which is next in priority. Such calls must be in writing to either IDWR or the watermaster.
3. If the watermaster receives a written call for distribution, the watermaster is to notify IDWR's Regional Manager in Twin Falls, or alternatively the Manager of the Water Distribution Section of the Water Management Division in the event the Regional Manager is unavailable.
4. IDWR and the watermaster must determine that when a call is made, water is needed under the senior priority water right making the call and that if additional water is distributed to the calling senior right, the water will be applied to the beneficial use authorized under the calling right. To accomplish this determination, the watermaster is to contact representatives of both Clear Lakes and Clear Springs to schedule a time for accessing Clear Lakes and Clear Springs properties, as soon as possible after a call is made, to ascertain the amount of water flowing from springs and available to water rights 36-02659, 36-02708, 36-07004, and 36-07218 (if any), as well as the need to distribute water among these rights based on priority.
5. As soon as the need for water under the calling senior right can be confirmed, IDWR and/or the watermaster will provide the holder of the junior priority water right or rights with 14-day notice by personal service to the water right holder, or the facility manager for the water right holder, and by mail or facsimile, if available, that the watermaster will adjust the 6-ft adjustable weir so as to distribute water to the calling senior right, reducing or curtailing the distribution of water to the remaining water right(s) in the order of the most junior priority of the remaining right(s) being reduced or curtailed first.
6. At expiration of the 14-day notice, the watermaster is to re-confirm the amount of water flowing from springs and available under water rights 36-02659, 36-02708, 36-07004, and 36-07218 (if any), based on priority, and to adjust the 6-ft adjustable weir as necessary to distribute water to the rights in order of priority.
7. The watermaster is to document, check, and adjust the distribution of water in accordance with priority of the rights on a weekly basis unless notified by either Clear Lakes or Clear Springs that flows have changed and adjustment is necessary.

8. To determine the amount of water flowing from springs and available to the above water rights, the watermaster must add together the quantities of water flowing to the Clear Lakes and Clear Springs hatcheries. To determine the amount of water flowing to the Clear Lakes hatchery (subject to further confirmation)¹:
 - (a) Read staff gage above the 40-inch west weir near the Clear Lakes hatchery holding ponds;
 - (b) Determine discharge through the west weir from attached table for Clear Lakes west weir discharge;
 - (c) Read staff gages on each of the six 10-ft Clear Lakes east weirs;
 - (d) Determine discharge through each of the six Clear Lakes east weirs from the attached table for Clear Lakes east weirs;
 - (e) Add 0.20 cfs to account for flow in the hatchery holding ponds through the perforated PVC pipe (if operating);
 - (f) Add discharge from the west weir, each of the six east weirs, and the hatchery pipe to determine the total amount of water flowing to the Clear Lakes hatchery.

To determine the amount of water flowing to the Clear Springs hatchery (subject to further confirmation)²:

- (g) Read staff gage in west diversion pool above 22-ft weir;
- (h) Determine discharge through the 22-ft and 10-ft weirs from attached table for Clear Springs combined weirs;
- (i) Add one (1) cfs to account for discharge of pipe into Clear Springs holding ponds and minor flow from pipes into headrace (if pipes are flowing);
- (j) Read weir measuring the discharge from the wet lab at the Clear Springs Research Laboratory.
- (k) Determine discharge for the wet lab effluent from the table for the Clear springs wet lab weir, or use the average flow which is estimated to be 0.5 cfs;

^{1 & 2} Adapted from "REPORT ON WATER MEASUREMENT AND DISTRIBUTION PREPARED FOR CLEAR LAKES TROUT COMPANY AND CLEAR SPRINGS TROUT COMPANY – BUHL, IDAHO," by C. E. Brockway, P.E. and Keith E. Anderson, P.E., December 1988.

- (l) Add discharge from the 22-ft and 10-ft weirs, the pipes into the holding ponds and headrace, and the wet lab, to determine the total amount of water flowing to the Clear Springs hatchery.

The total amount of water flowing from springs and available to water rights 36-02659, 36-02708, 36-07004, and 36-07218, is equal to the sum of (f) and (l).

8. If the total flow is equal to or greater than 375 cfs (± 5 cfs) then the amount of spring flows to Clear Lakes, 7.(f), should be 175 cfs with all the remaining flow to Clear Springs up to 251.55 cfs.
9. If the total flow is less than 375 cfs (± 5 cfs), then the watermaster is to adjust the 6-ft adjustable weir such that the first 100 cfs of spring flows goes to Clear Lakes, the next 200 cfs of spring flows or part thereof goes to Clear Springs, and any remaining flow goes to Clear Lakes.
10. If an adjustment to the 6-ft adjustable weir is required, the watermaster should do the following (subject to further confirmation)³:
 - (a) Determine the required increase or decrease in flows to Clear Lakes to provide the flows to Clear Lakes and Clear Springs set forth in 9. above.
 - (b) Measure the height in feet of the gate stem above the adjusting wheel nut on the 6-ft adjustable weir discharging from the west diversion pool and subtract 0.64 (datum adjustment) from the measured gate stem height.
 - (c) Subtract (b) from the gage reading (in feet) from the staff gage in west diversion pool above Clear Springs' 22-ft weir.
 - (d) Determine discharge through the 6-ft adjustable weir using the attached table for the 6-ft adjustable weir.
 - (e) Add or subtract the required change in flows to Clear Lakes from (a) above to the measured discharge through the 6-ft adjustable weir determined from (d) and determine what the change in height for the gate stem measured from the adjusting wheel nut on the 6-ft adjustable weir should be to provide the changed flow to Clear Lakes.
 - (f) Adjust the 6-ft adjustable weir up or down with the handwheel to achieve the required gate stem height as determined in (e).

³ Adapted from "REPORT ON WATER MEASUREMENT AND DISTRIBUTION PREPARED FOR CLEAR LAKES TROUT COMPANY AND CLEAR SPRINGS TROUT COMPANY – BUHL, IDAHO," by C. E. Brockway, P.E. and Keith E. Anderson, P.E., December 1988; and from letter report to Dan Steenson and Charlie Honsinger, Ringert Clark Chartered, from Dave Shaw, ERO Resources Corporation, May 2, 2002.

- (g) Repeat (a) through (f), if necessary, after allowing sufficient time for the change in flows to stabilize through the hatcheries.

Attachments (9 pages)