



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 12, 2004

Charles L. Honsinger
Ringert Clark, Chartered
455 South 3rd Street
P. O. Box 2773
Boise, ID 83701

VIA FACSIMILE TO (208) 342-4657 AND FIRST CLASS MAIL

Re: Additional Adjustments to the 6-ft Adjustable Weir

Dear Mr. Honsinger:

I have reviewed your letter dated February 10, 2003, in which you interpret the *Amended Watermaster Instructions for the Distribution of Water Among Water Rights Nos. 36-02659, 36-02708, 36-07004, 36-7201 and 36-02718*, dated June 13, 2002, to require that the watermaster not adjust the 6-ft adjustable weir until Clear Springs initiates a call for the distribution of water and there is a determination that Clear Springs could apply the water to the authorized beneficial use. You also assert that before any adjustment is made to the 6-ft adjustable weir, the Department or the watermaster needs to provide 14-day notice.

The procedures you described in your letter are certainly applicable at the time when an initial call for the distribution of water is made. For the past 21 months, the Department has been administering the water rights in response to the water delivery call initiated by Clear Springs Foods on June 7, 2002. Once the water delivery call has been made, as in this case, the watermaster instructions delineate when it is appropriate to adjust the 6-ft adjustable weir. The watermaster instructions provide:

7. The watermaster is to document, check and adjust the distribution of water in accordance with the priority of rights on a weekly basis unless notified by either Clear Lakes or Clear Springs that flows have changed and adjustment is necessary.

....

9. If the total flow is less than 375 cfs (\pm 5 cfs) then the watermaster is to adjust the 6-ft adjustable weir such that the first 100 cfs of the spring flow 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.

The flow has remained under 375 cfs since the initiation of the water delivery call by Clear Springs on June 7, 2002. The watermaster instructions cited above describe the periodical adjustments to the weir needed to accommodate the changes in spring flows after the water delivery call has already been recognized. The procedures described in your letter are applicable at the time a water delivery call is first initiated, and before the first action is taken by the watermaster in response to the call.

In this instance, the watermaster gave verbal notice to the Clear Lakes facility manager on January 30, 2004, that adjustment of the 6-ft weir would be necessary in order to distribute the available water supply in accordance with item 9 of the watermaster instructions. It is my understanding, based on staff discussions with the watermaster, that the Clear Lakes facility manager gave consent to the watermaster on February 6, 2004, to schedule the adjustment of the 6-ft weir on February 13, 2004, effectively resulting in 14-day notice of the adjustment. It is also my understanding that the watermaster discussed the diminished available water supply with the Clear Springs facility manager on February 11, 2004, and that the watermaster confirmed full delivery of 200 cfs under the Clear Springs senior water right was needed and would be applied to beneficial use.

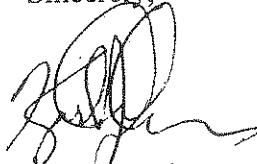
Although the watermaster instructions encompass different procedures depending on the circumstances for the adjustment of the 6-ft weir, I am concerned that Clear Lakes, or Clear Springs for that matter should the available water supply be more dramatically diminished, be given sufficient time to make preparations to move fish for which the distributed water would not be adequate following adjustment of the 6-ft weir. Therefore, in this instance the watermaster will delay adjustment of the 6-ft weir until February 20, 2004, unless Clear Lakes agrees an earlier adjustment can be accommodated.

For future adjustments, the watermaster is to continue to determine that water distributed in priority to both Clear Lakes and Clear Springs is applied to beneficial use when making the weekly checks of water distribution at the Clear Lakes and Clear Springs facilities. Consistent with the *Amended Watermaster Instructions for the Distribution of Water Among Water Rights Nos. 36-02659, 36-02708, 36-07004, 36-7201 and 36-02718*, dated June 13, 2002, the watermaster is to continue to provide verbal notice of future adjustments to the 6-ft weir to the facility manager or holder of the junior priority water right that is subject to having diversions reduced, providing reasonable time to remove fish from the hatchery facilities. The watermaster is also to continue to confirm the need for the water authorized to be diverted under the senior right and the intended application to beneficial use. I expect that the watermaster will continue regular verbal communications that she has maintained with the facility managers during weekly checks of the distribution of water between hatchery facilities.

Charles L. Honsinger
February 12, 2004
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Please contact Glen Saxton or myself if you have any further questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl J. Dreher', written over a circular stamp or seal.

Karl J. Dreher
Director

c: Kay Hardy – Clear Lakes Trout
Cindy Yenter – Watermaster for Water District No. 130
Glen Saxton – IDWR
John Simpson – Clear Springs Foods