



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

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CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

November 16, 1993

George Lemmon  
1050 E. 2727 South  
Hagerman, ID 83332

Re: Response to Letter of November 3, 1993

Dear George:

I have reviewed your letter of November 3 which asks about records of water distribution and rotation of water rights.

I believe that your first question concerning water records has been raised in response to my letter of September 7, 1993. That letter directed you to submit a Watermaster's Report for 1993 which is required by Idaho Code Section 42-606. You were also directed to submit any written records of measurements or water distribution you have taken during any year in which you were watermaster in Water District 36-A. This latter request was made because the Department has no distribution or measurement records for the water district covering the past twenty to thirty years. It appears that the reports may never have been filed in compliance with state law for Water District 36A.

This year you submitted monthly measurements for the head of Billingsley Creek for years 1966 through 1992. We also received 1993 measurements for the Curran Ditch. I am not aware of any other records you have submitted this year documenting distribution either for 1993 or any previous years. I understand that the Billingsley Creek measurements you submitted earlier this year are a summation of Billingsley Creek flow plus the irrigation pipeline diversions from Curran Tunnel. I suggest therefore that you submit measurements of the individual irrigation diversions from Curran Tunnel and also include any past measurements for the Curran Ditch.

You should also submit any other water measurement or distribution records which you may have from past years for any other water sources and diversions within Water District 36A. Since the Department does not have any measurement or distribution records for the previous years in which you were watermaster, you should send copies of everything you have except for the data you already submitted this year. The Department will not reimburse you for the cost of making the copies. This cost will have to be reimbursed to you by the water users in the district. If the number of copies and/or cost is a concern, you

George Lemmon  
Page 2  
November 16, 1993

may want to consider submitting the original documents to the Department. The Department can microfilm the original documents at no cost and then return them to you within a very reasonable time.

Your second question asks why you have to ask water users on Billingsley Creek if they want their water delivered by priority or rotation. By correspondence of June 8 and again on August 10, 1993, this office directed you to deliver water rights from Curran Tunnel according to priority. However, based on Department field visits during the 1993 irrigation season, it appeared that the Curran Tunnel water users were rotating their rights from the Tunnel. The Department recognizes that rotation agreements among water users during periods of scarcity is a common practice. Rotation agreements among water users have also been recognized by Idaho case law. In order to accommodate the flexibility provided by rotation, the Department therefore directed you by correspondence dated August 10, 1993, to distribute the available water supply from Curran Tunnel according to decreed priority and amounts **unless** the parties otherwise agree among themselves.

The August 10 letter further directed you to advise the Department in writing by August 12, 1993 regarding the water users intentions for the distribution of the available water supply of Curran Tunnel. On August 12 you phoned the Department and stated to David Shaw that it was the choice of the water users to rotate the water from the Tunnel. However, affidavits filed with the district court by Curran Tunnel water users later in August suggest that you did not follow the Department's direction to contact the users and determine if they wanted water delivered by priority or rotation.

Due to the discrepancy between the affidavits and your statements to Mr. Shaw on August 12, Department staff met with you on August 26 and asked you to submit written documentation explaining the apparent discrepancy. This documentation has not yet been received by the Department. The Department's correspondence of September 7, 1993, then reinstructed you to contact or re-contact each of the users who filed an affidavit, and contact all other water users on Billingsley Creek **who rely upon water from the Curran Tunnel**, to inquire whether they wanted their water delivered by priority and amount, or pursuant to a rotation scheme. You were also instructed to include the response of your inquiry and dates thereof in your watermaster's report pursuant to Idaho Code, Section 42-606.

Sincerely,

  
R. KEITH HIGGINSON  
Director

RKH:dc