

Norm
Karl KJD

MEMORANDUM

MS
TO: Glen Saxton

FROM: Tim Luke

DATE: 2/3/1997

RE: Recent problems with direction and delivery of water in
Waster District 36-A, Watermaster George Lemmon

As per your request, I am briefly documenting some recent problems regarding direction of George Lemmon as watermaster of Water District 36-A, Billingsley and Riley Creeks.

My comments are limited mainly to the period from December, 1996 to present, but problems have existed in the past. On December 4, 1996, IDWR received three written calls for delivery of water from Aqualife Inc. (owner is Ken Ellis), a holder of water rights from two separate spring sources, Big Springs and Tupper Springs, and Billingsley Creek. The written calls were preceded by a visit to our office by Ken Ellis on November 15. Ellis informed us at that time that we would receive written calls for delivery of water no later than November 22. Aqualife had also filed calls on the spring sources last spring.

Problems and events listed as follows:

- In anticipation of the Aqualife calls, IDWR sent correspondence to Lemmon on November 21 and November 27 instructing that he should regulate the Tupper diversion from Tupper Springs according to the water rights, and curtail Lemmon's own diversion to a hatchery from Big Spring since he did not have a valid water right to divert water during the non-irrigation season for such use.

- In response to IDWR's November letters, the chairman of the Water District 36-A advisory committee sent a letter to IDWR requesting answers to several questions so that the advisory committee would know 'what to advise the Watermaster to do to carry out his duties.' The questions in the letter resulted from a meeting the watermaster had with the advisory committee. IDWR was not advised of this meeting or invited to attend, yet received several calls from water users about the meeting.

- IDWR received calls from Aqualife dated December 4. In response, IDWR staff visited the diversions on both December 5 and December 13 and made a number of measurements and observations. Lemmon accompanied IDWR staff (Bryce Contor and I) on both visits. On December 5, Lemmon measured a different rate of diversion to the Aqualife hatchery from Big Spring than IDWR staff (he made his measurements before we did and left before we could compare measurements). A follow-up visit with Lemmon on

December 13 revealed that Lemmon had incorrectly measured water levels or head over Aqualife's discharge weir structures. Lemmon and IDWR staff agreed on the measurements during the second visit.

On both December 5 and 13, IDWR found that the Tupper diversion had not been regulated pursuant to IDWR directives in the November 21 and 27 letters. We did not visit Lemmon's hatchery on December 5, but Lemmon advised us then that the hatchery diversion had been significantly cut back, and that most of the fish had been removed. On December 13, Lemmon was still diverting water to his hatchery (2 cfs) and staff observed fish in his raceways. Also on December 13, Lemmon disagreed with our field measurement of the Big Spring pipe line and claimed our ultrasonic measurement of this pipe was not accurate. He measured the same pipe with a portable pitot tube and obtained a lower flow rate and velocity reading than IDWR. He acknowledges that his pitot tube does not sufficiently penetrate the velocity profile of this pipe, and IDWR staff believes that his gage does not accurately register lower velocities.

- On December 17, IDWR sent correspondence to Lemmon with rather detailed instructions about regulating certain uses and water rights. Lemmon was again directed to limit the Tupper hatchery diversion to its fish propagation water right (1 cfs), and Lemmon was again directed to curtail his own hatchery diversion. IDWR also directed Lemmon to limit the rate of diversion to the Curren Ditch, a Billingsley Creek diversion, since the diversion was found by IDWR to be well in excess of authorized non-irrigation season water rights and uses. Lemmon was offered help by staff to further measure and/or regulate diversions. IDWR provided a deadline of December 30 to regulate specific diversions so that the water right holders could make arrangements to move fish etc.

- Sometime in December (exact date unknown), Lemmon called Clive Strong's office at the Attorney Generals Office and asked a staff attorney questions about IDWR directives and the 1932 New International decree. Staff attorney in turn contacted me. Lemmon was concerned that he could not follow IDWR directives as he felt they were not in accordance with the decree. Lemmon specifically felt that following IDWR directive would place him in contempt of court. Staff attorney advised Lemmon to follow IDWR directive.

- I made an inspection of some diversions on January 13, 1997. Lemmon had curtailed his hatchery diversion from the Big Spring source as was directed by IDWR. The Curren Ditch had still not been regulated as per IDWR instructions of December 17. The ditch continued to divert the entire flow of Billingsley Creek near the head of the creek, about 32 cfs, or about 10 cfs in excess of the authorized diversion rate. I pulled one board on the check/control structure and lowered the ditch diversion by about 5 cfs. I had stopped by Lemmon's house on this day and had called him prior to leaving Boise, but was unable to reach him.

I sent a letter to Lemmon the following day thanking him for regulating his own hatchery, but asking why the Curren Ditch had not been regulated and advising that IDWR may further adjust this diversion if necessary.

- IDWR received letter from Lemmon dated January 19. As far as I know, this was the first contact Lemmon had initiated with Department over these matters since our letter of December 17 (excluding contact with AG Office). Lemmon's letter suggested that IDWR directives to curtail Lemmon's hatchery diversion from Big Spring had caused a leak in the Big Spring conveyance pipe and that IDWR could be held liable for problems arising from the leak. Lemmon also said he did not regulate the Curren Ditch because Aqualife was not making beneficial use of water from Billingsley Creek. He further questioned the capacity of the Aqualife diversion from Billingsley Creek, that IDWR had not considered all of the rights on the Curren Ditch, and questioned who would be held liable for injuries resulting from regulating the flow of the Curren Ditch.

Aside from these recent communication problems, we had some problems with Lemmon regarding calls for water in November of 1995 by Bill Jones against Donnie McFadden over Three Springs. At that time, Lemmon prepared a letter which was sent to McFadden stating that he would not respond to the Jones call because he had a different interpretation of the decree than IDWR. Lemmon did not send his letter to Jones and Jones and McFadden subsequently entered into an agreement about their use of water.

Additionally, Lemmon or the water district continues to not submit annual watermaster reports, proposed budgets or adopted budget reports in a manner consistent with Idaho Code. I know that the district has adopted some budgets in recent years, but reporting does not reveal how much was collected and who paid etc., and may not detail full expenses of the district. To his credit, Lemmon has in recent years sent information about district expenses and miscellaneous measurements for most of the major diversions in the district, which is more than had been sent in past years.

Apart ^{from} ~~form~~ watermaster duties, Lemmon is also providing measuring and reporting of several ditch diversions which fall under the IDWR Basin 36 water measurement reporting program. For several of these diversions, Lemmon fails to adhere to Department measurement and reporting guidelines. He was specifically asked to provide additional measurements (weekly or bi-monthly) but recent reports submitted lack the sufficient frequency of measurements.

I hope I have sufficiently documented recent events with which you are concerned. I also hope that I am not appearing to be hostile to Mr. Lemmon. I respect him a good deal despite our differences about water and water rights. I am concerned about the amount of time I seem to spend with this district compared with the results produced from that labor.