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State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

June 18, 1999

Norman Semanko
PO Box 1906
Twin Falls, ID 83303-1906

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: Lake Cleveland Water

Dear Norm:

Based on your June 8th letter I have again reviewed the records regarding the water rights on Lake Cleveland. I have also contacted A. W. Anderson inquiring about his recent release of water from Lake Cleveland and contacted Don Gunderson, watermaster on Marsh Creek, inquiring of his deliveries.

Please understand that the evacuation of the reservoir may be an issue of safe operation of the dam and separate and apart from the issue of delivery of the water rights.

My review of the water right records finds the Wood vs. Stokes decree lists the right from Lake Cleveland with a priority of March 31, 1888 for 240 inches. The right was split between George Giles (80 inches) and the John Parke Estate (160 inches). The decree and findings further indicate that the water from the lake/reservoir is conveyed by a ditch and added to the waters of Marsh Creek in the amount of 240 inches and measured at that point; then the waters are conveyed in Marsh Creek and delivered to the respective headgates. Giles was to get 75 inches and the Parke Estate 150 inches at their respective headgates. (By calculation this is 6.25% loss from point of injection to point of re-diversion.) My initial thoughts on this right was that it should be treated as a storage right with only allowance for the capacity of the reservoir (estimated to be 99 AF by IDWR Dam Safety Section) with one time filling. I have further considered the wording of the decree and it is now my opinion this right may be a hybrid of storage and natural flow from the lake. It is my understanding that the long held practice has been that the owners of the right have maintained the reservoir and ditch and turned the water out as needed. When the water makes it down the 3 mile ditch to Marsh Creek the watermaster then measures what makes it to Marsh Creek and delivers it to the owners with a 6.25% loss at their headgates. The amount of water turned out of the reservoir is not directly considered in what is delivered at the headgates; only the amount that makes it to Marsh Creek.

In my conversation with Mr. Anderson he indicated that his employee had opened up the gate at the reservoir and was passing

approximately 200 inches of water down the ditch. I asked for what purpose and he indicated that it was for irrigation, not for any dam safety issue. He indicated that in the past when they discharged water they derived no or little benefit. He indicated that this year they were trying to see if they could get the water down when the soil profile is moist hoping there may not be so much loss. I explained to him your letter and how people were concerned with water being wasted. I told him I would be contacting the watermaster and he said he would maybe check the dam himself to confirm what was going on.

In my conversation with Mr. Gunderson he indicated that he was notified on 6/2 that water was being released from Lake Cleveland. He indicated that on 6/4 and again on 6/5 nothing was making it to Marsh Creek. He indicated that on 6/8 he found 26 inches making it to Marsh Creek noting it was after a rain. On 6/12 he found 13 inches making it to Marsh Creek. He indicated that currently the Anderson property was not taking any of the natural flow Marsh Creek decrees directly from Marsh Creek but was being charge for 48 inches of Marsh Creek water based on diversion from a waste stream tributary to Marsh Creek for the old Parke ranch. Nothing was being delivered to the old DeNaughel ranch. Mr. Gunderson indicated that Land Creek has recently raised in flow and he suspects that is where the lake water is going. I asked how he has delivered water from the lake in the past and he indicated that he only delivered it once about 4 or 5 years ago and that was to the Anderson place. He indicated that in recent years due to the dispute when people call for the water he notes it in the delivery book but has not delivered it to the headgates. On this same track, I contacted the State Office and had them pull and review watermaster records since 1970. They found that the only note of delivery was to Woody Anderson in 1993 from August 16th to August 20th for a total of 5 24hr-second feet. It is noted in the watermaster comments for the protested transfers that in 1995 approximately 300 inches were turned out of the reservoir and only 58 inches were measured at Marsh Creek. In 1996 it was noted again that 300 inches were turned out of the reservoir but nothing made it to Marsh Creek. Review of Fred Parke's deposition indicates that he never observed the entire 240 inches making it down the ditch to Marsh Creek. Parke indicated it sinks away with portions of it raising in Land Creek. I understand that the increase in the flows of Land Creek have been treated as natural flow and distributed among the decree holders on that stream. All these statements seem to collaborate each other.

In your letter you raise the issue of diversion beyond Anderson's legal limit. Even though ownership of the entire right (240 inches) has not yet been resolved it is reasonable that Anderson has a right to at least 28 inches of water measured at the ditch into Marsh Creek. Regarding wasteful use of water it, appears that water is not currently being diverted to the Anderson property in excess of that which would be beneficial. It may be prudent to utilize natural flow rights first and then storage water second in a normal system, but the circumstances of Lake Cleveland are

somewhat unusual and at this point to classify this use as wasteful may not be accurate. I presently view Mr. Anderson's attempt to gain delivery of Lake Cleveland water as an experiment and encourage Mr. Anderson to monitor his releases, monitor the seepage losses in the delivery ditch and measure the benefit he derives while being mindful of your client's concerns. Other parties may wish to monitor the same. I would question prolonged release of the lake water without direct re-diversion from Marsh Creek for a beneficial use.

I think the more pressing question yet to be resolve is ownership of the Lake Cleveland right. As you know in the SRBA this water right has been over claimed and there are currently two transfers (T5089 in the name of George Montgomery and T5090 in the name of A. W. Anderson) under protest largely due to the ownership question. As you know the pre-hearing conference held in Burley in 1997 for the protested transfers did not resolve the issues. You may recall at that time it was decided that the parties would wait and resolve the issues in the SRBA process. The following list is the current status of the SRBA claims (slightly different than the record in 1997) to the Lake Cleveland water:

A45-00294A	Cooper	1.60 cfs	(80 inches)
A45-00294C	Anderson	3.30 cfs	(165 inches)
A45-00294D	Montgomery	1.60 cfs	(80 inches)
A45-00294E	DeNaughel (Anderson)*	2.20 cfs	(110 inches)

*Change of Ownership filed - DeNaughel to Anderson

To resolve these issues the parties could proceed to have a hearing on the two pending transfers; have the parties agree to share the water and avoid litigation; wait for SRBA review and resolution through the SRBA court; or have the matter set for administrative review by pressing for a call on the water. If a call is made I understand the department may conduct a hearing and would issue a preliminary order.

By copy of this letter and your June 8th letter I will inform all parties of the forgoing. I recommend that if any party has additional information to support their SRBA claim they immediately augment their claim record.

Sincerely



Allen Merritt, PE
Southern Region Manager

CC: Kent Cooper	A W Anderson	Don Gunderson - WM 45F
George Montgomery	K C Stone	Doug Jone - SRBA