



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

February 4, 2000

George Lemmon
2727 South 1050 East
Hagerman, ID 83332

Don McFadden
Billingsley Creek Ranch
2726 South 1050 East
Hagerman, ID 83332

Re: Call for Delivery of Water – Big Spring

Dear Gentlemen,

On January 28, 1999 the department (IDWR) received a verbal inquiry from Ken Ellis, owner of water right 36-02338, which authorizes diversion of 54.68 cfs from springs tributary to Billingsley Creek, including Big Spring. This right has a priority date of August 5, 1954 for fish propagation. Mr. Ellis alleged that he was receiving less than the full amount that he is entitled under his right. He further alleged that an excessive amount of water was being diverted from Big Spring into the Big Spring Water Users Association pipeline.

In response to the above inquiry, IDWR advised Mr. Ellis that he should contact the Billingsley Creek watermaster to make an investigation of the diversion and uses associated with Big Spring. IDWR also advised Ellis that it would make a review the Big Spring water rights and contact the watermaster regarding Ellis' complaint.

On January 31, IDWR contacted watermaster Frank Erwin and notified him of the concerns expressed by Mr. Ellis. IDWR asked Mr. Erwin to verify the uses of water from Big Spring.

On February 1, Mr. Erwin contacted IDWR and reported that water from Big Spring was being diverted by each of you to your respective fish hatcheries. Mr. Erwin met with Lynn Babbington at McFadden's hatchery and measured approximately 2 cfs of water from Big Spring going to the McFadden hatchery. Babbington leases the fish hatchery from McFadden. A measurement was not made at the Lemmon hatchery on this date. Erwin confirmed that both hatcheries contained fish. Mr. Erwin looked for Mr. Lemmon at the time of his visit but was unable to find him.

Mr. Erwin also stopped at the City of Hagerman water tank and pumping plant facility. He confirmed with a city employee that the City was diverting about 900 gpm (2.0 cfs). Mr. Erwin also inspected the Big Spring diversion box at the head of the pipeline. Erwin had no means to measure the water at this location but estimated that about 80 percent of the supply was being diverted to the pipeline while the remainder was spilled from the box to the Ellis hatchery diversion pond. Erwin visited with the manager of the Ellis hatchery. The manager told Erwin

that they were about 4 to 5 cfs short of the amount allowed under right 36-02338 Erwin noted that fish were present in the Ellis hatchery raceways that are fed by Big Spring.

On February 3, IDWR contacted Mr. Erwin and asked him to obtain a measurement of the Lemmon hatchery. IDWR also asked Erwin to make a measurement of the Ellis hatchery to verify that Ellis was not receiving all of water right 36-02338.

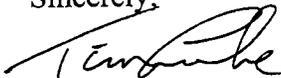
On February 4, Erwin contacted IDWR and reported that he met with the Ellis hatchery manager and measured the discharge of water from the Ellis hatchery that receives water from Big Spring. The hatchery discharge was measured at 46.92 cfs. Erwin also reported that he had spoken with George Lemmon concerning his hatchery diversion. Mr. Lemmon told Erwin that he was diverting 6 cfs to the hatchery from Big Spring. Mr. Erwin did not physically confirm this reported diversion rate.

The Department's records show that Big Spring Water Users Association (BSWUA) is the holder of two water rights for irrigation, municipal and domestic purposes that are senior to Aqua Life's water right no. 36-02338. These rights are 36-00022, for 12.9 cfs and priority of 03/01/1909, and 36-00023, for 5 cfs and priority of 04/01/1911. The rights are diverted to the pipeline at the Big Spring diversion box. These rights are deliverable for the quantities and uses listed above during the irrigation season. During the non-irrigation season, municipal and domestic uses may be limited to smaller quantities. The department does not recognize fish propagation as a valid use of water under rights 36-00022 and 36-00023.

The purpose of this letter is to notify you of the call for water made by Ken Ellis on Big Spring for right 36-02338. The department further wishes to notify you that diversion of water from Big Spring for fish propagation is not an authorized use under water rights 36-0022 and 36-0023.

By copy of this letter, the department hereby directs the watermaster of Water District 36-A to contact you and inform you that you must cease and desist the diversion of water from Big Spring for fish propagation use. The watermaster shall advise you that your hatchery diversion from Big Spring water must be curtailed by February 10, 2000. You therefore have about 5 days from the date of this letter in which to make arrangements to move fish before the water is shut off. This letter is being sent by facsimile to the watermaster on February 4th with instructions to hand deliver the letter to you as soon as possible.

Sincerely,



Tim Luke

cc: Frank Erwin, Watermaster
City of Hagerman
Ken Ellis, Aqua Life, Inc.
Big Spring Water Users Association
Southern Region