11-250

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REGULATION OF WATER DIVERSION FOR THE OPERATION OF FISH CREEK DAM, BY THE OWNER, FISH CREEK RESERVOIR COMPANY, INC.	)	**ORDER**

This matter is before the Director of the Idaho Department of Water Resources ("Director" or "Department"), as the result of investigations conducted by the Department regarding the stability of Fish Creek Dam and subsequent communications with submittals by the owner of Fish Creek Dam, the Fish Creek Reservoir Company, Inc. In response, the Director enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Fish Creek Reservoir Company, Inc. ("Owner") is the owner and operator of Fish Creek Dam, a 92 ft. high concrete structure constructed (circa 1920) across a natural drainage in the NW1/4 of Section 15, Township 1 North, Range 22 East, B.M., Blaine County, Idaho.

2. On February 17, 2005, the Department approved Plans and Specifications for modification of the spillway at Fish Creek Dam.

3. On February 22, 2005, the Director issued a Second Amended Order, sent to the Owner by certified mail, that authorized storage at Fish Creek Dam through October 31, 2005, and directed the Owner, in part, to:

   a. perform a seismic analysis;

   b. rehabilitate the arches and the buttresses in the maximum section of the dam; and

   c. maintain the emergency warning system in full operating status.

4. In early March 2005, the Owner completed removal of the two arches between buttresses 61 and 63, and lowered the spillway crest to gauge height 69.2 feet, reducing the hydraulic height of the dam from 88 feet to 69.2 feet and reducing the storage capacity from 12,743 acre-feet to approximately 5,500 acre-feet.

5. The Owner submitted affidavits to the Department on March 30, April 12, May 9, May 21, June 3, and June 19, 2005, indicating the emergency warning system (EWS) was tested and was fully operational.

6. On November 16, 2005, Department staff conducted an inspection of Fish Creek Dam. Significant findings from the inspection included:

a. most of Fish Creek Dam remains in very poor condition;

b. deterioration continues of key structural elements critical to the stability of the dam;

c. a hole was found in the arch located between buttresses 23 and 24;

d. the EWS was only partially functional, the signal lights on U.S. Highway 20/26/93 were not working;

e. no additional dam rehabilitation work had been done since the buttress repairs were completed in 2004;

f. the current poor condition of Fish Creek Dam poses a threat to life and property.

7. On November 17, 2005 the Department was advised that the EWS had been repaired by replacing the batteries that powered the main station and the relay station.

8. The Department received an affidavit from the Blaine County Sheriff and the Fish Creek Watermaster indicating they had witnessed a test of the EWS on November 20, 2005, and that the system was fully operational.

9. As of the date of this order, the Owner has not submitted any information related to the following components of the approved rehabilitation plan:

a. seismic analysis that originally was to have been performed in 2004;

b. rehabilitation of the high bays that originally was to have been accomplished in 2004 and 2005.

10. The Department has received a document entitled "Proposal and Cost Estimate – Fish Creek Reservoir Company Storage Dam Replacement Alternatives Evaluation" dated October 31, 2005 in the name of Brockway Engineering PLLC. This document describes that Brockway Engineering proposes to conduct the evaluation between January 1 and July 1, 2006. If a replacement structure is constructed, the requirements for a seismic analysis and rehabilitation of the high bays on the existing structure need to be reconsidered.

CONCLUSIONS OF LAW

1. Idaho Code § 42-1717 vests jurisdiction over supervision of the operation of dams and reservoirs with the Director of the Department of Water Resources. If in the opinion of the Director, a dam poses a threat to life and property, he shall give written notice to the owner and order that the dam be made safe.

2. Idaho Code § 42-1719 specifies that a certificate of approval issued by the Director is required for lawful impoundment of water behind a dam. Without such approval, an owner is prohibited from taking action that would cause water to be impounded.

3. In accordance with the Second Amended Order issued by the Director on February 22, 2005, authorization to store water at Fish Creek Dam expired November 1, 2005.

4. Idaho Code § 42-1712 provides that an owner who desires to repair a dam more than 20 feet in height must submit the plans for repair to the Director and shall not commence the repairs until the Director has approved the plans.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Authorization to store water behind Fish Creek Dam is extended through January 31, 2006. Future authorization to store water will be dependent upon the Owner's progress in completing the following actions:

   a. submit plans, prepared by a professional engineer and subject to review and approval by the Department, for repairing the hole in the arch located between buttresses 23 and 24.

   b. repair the hole in the arch in accordance with the provisions of plans approved by the Department, with construction to be completed within 60 days of this Order.

   c. submit a dam break analysis with inundation maps within 60 days of receipt of this order. The dam break analysis shall be prepared by a reputable professional engineer registered in the State of Idaho that has experience in performing dam break analyses. The dam break analysis shall be performed with the reservoir at the present spillway crest elevation, gauge height 69.2 feet and at the elevation of the hole in the dam, approximately gauge height 60 feet. Cross sections shall be taken from just downstream of the dam to U.S. Highway 20/26/93 and shall be accurately surveyed using survey equipment or Global Positioning

Systems. The engineer selected to perform the analysis shall submit a proposal to IDWR within 15 working days of receipt of this Order.

d. maintain the emergency warning system in full operating status (Rule 55.01(d)(iv)).

2. The owner shall conduct a full test of the emergency warning system once every two weeks when the reservoir water surface elevation is above gauge height 50 feet, and once each week when the reservoir water surface elevation is above gauge height 60 feet. If all features of the system are confirmed as being one hundred percent functional, the Owner must submit written documentation of the test to the Department within 48 hours. If not all features of the system are confirmed as being one hundred percent functional, the Owner shall:

a. notify the Department within 24 hours;

b. take immediate steps to repair and retest the system as quickly as possible; and

c. operate the outlet valves such that the reservoir water surface elevation does not rise above the level existing at the time of the test.

3. The Owner shall monitor reservoir water levels and seepage once a week when the reservoir water surface elevation is above gauge height 50 feet, and once each day when the reservoir water surface elevation is above gauge height 60 feet. Readings of the reservoir water surface elevation shall be submitted to the Department on a weekly basis. If there is any significant increase in seepage, the Owner shall:

a. take immediate action to draw down the reservoir as rapidly as possible without causing flooding damage downstream of the dam; and

b. immediately notify the Blaine County Sheriff's office and the Department.

4. The requirements for seismic analysis and rehabilitation of the high bays are suspended until July 1, 2006, provided the Owner diligently proceeds with obtaining an evaluation of storage dam replacement alternatives from a qualified professional engineer.

5. The performance of inspections, surveys, or investigations by the Department shall in no way relieve the Owner, as the operator of the dam, of its obligations or liabilities incident to the ownership or operation of the dam or the contents of the reservoir.

6. The Director has issued this Order pursuant to Idaho Code § 67-5246. Any party may file a petition for reconsideration of this Order within fourteen (14) days of the service date shown on the certificate of service.

DATED this 25th day of November, 2005.

David R Tuttle Jr

for KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 2005, the above and foregoing document was served on the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

DOUG SURERUS
PRESIDENT
FISH CREEK RESERVOIR COMPANY
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CAREY ID 83320

MARILYN BROEK, P.E.
3171 E 3500 N
TWIN FALLS ID 83301

IDWR – SOUTHERN REGION
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Patsy McGourty
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