

Gibson, Deborah

Subject: FW: Draft Letter-Inquiry from Legislators About Reservoir Fill
Attachments: Basin 63 Accounting - reponse letter to legislators.docx; Basin 63 facts for Fill Discussion with Legislators.docx

From: Spackman, Gary
Sent: Tuesday, October 21, 2014 1:12 PM
To: 'Stephen Goodson'; 'David Hensley'
Subject: Draft Letter-Inquiry from Legislators About Reservoir Fill

Attached is a draft letter responding to the letter received from Boise Basin legislators on or about Oct 6. Also attached is a one page memo summarizing facts discussed at a meeting with Governor Otter and the legislators on September 19, 2014. The bullet points in the memo counter some of the assertions in the legislators' letter. I originally included the bullet points in the proposed language of the draft letter prepared for Governor's signature, but, because of unnecessary detail and length, placed them in a separate document. I hope this is helpful. Gary

October 21, 2014

Dear Representatives:

Thank you for your interest the important water issue of protecting water users and associated storage of water in the Boise River Basin and other surface water basins in the state.

Your letter questions the method of accounting employed by the Water District 63 and the Idaho Department of Water Resources (“IDWR”) in determining when a water right for on-stream storage is satisfied. The letter states that the method of accounting “undermines the critically important storage rights that support multiple agricultural, residential, commercial recreational and other interests . . .” The letter also states that the method of accounting “does not make any sense . . .”

The responsibility for determining how water rights are satisfied, including the satisfaction of water rights for on-stream storage, is vested in the Director of the Idaho Department of Water Resources. In a recent Idaho Supreme Court case, the justices unanimously held that “Idaho Code § 42–602 gives the Director broad powers to direct and control distribution of water from all natural water sources within water districts. . . . [T]he Director's clear duty to act means that the Director uses his information and discretion to provide each user the water it is decreed. And implicit in providing each user its decreed water would be determining when the decree is filled or satisfied.”

In your letter, you asked that I dismiss “the contested case initiated by the Director” and that I account “for the storage and release of storage water for beneficial use in the Boise Valley consistent with . . .existing storage water rights without counting flood control releases against those rights.” These actions were proposed for the purpose of allowing “the time needed to discuss this matter and formulate a clear path forward that preserves and protects existing Boise reservoir storage rights . . .”

I am committed to preserving and enhancing the current protections of the reservoir storage contract holders and ensuring that the right to store water in the Boise River federal reservoirs is not undermined or eroded. The Director of IDWR has assured me he is also committed to these goals. Ongoing processes to accomplish these objectives are:

- Consideration of beneficial use claims in the Snake River Basin Adjudication filed by the storage water users
- Informal discussions with water users about accounting and possible settlement to address water users concerns
- A contested case where a record can be built to establish a basis for determination of how a storage water right is filled

There are ongoing administrative and judicial processes that grant an opportunity for discussion and formulation of a path forward. I will carefully monitor these administrative and judicial proceedings to ensure the continuing right to store water is not undermined, and that the users of water are protected from “claims of the federal government, downstream states and other parties.”

Sincerely,

MEMORANDUM

To: Stephen Goodson, David Hensley
From: Gary Spackman
Date: October 21, 2014

Re: Accounting for "Fill" of an On-Stream Reservoir

The following are facts presented at the September 19, 2014 meeting attended by Governor Otter, Treasure Valley Legislators, Stephen Goodson, Gary Spackman, and Mat Weaver.

- The on-stream storage reservoirs on the Boise River are operated for dual purposes: (1) Federal flood control under federal law, for which there are no state-based water rights, and (2) storage for irrigation, municipal, and other purposes for which there are state-based water rights.
- The federal government controls flood control operations of the reservoirs.
- The federal government holds legal title to the state based-water rights for the storage of water in the Boise River reservoirs. The water users to whom storage water is delivered hold contracts with the federal government for delivery of storage water to them. These contracts also specify that the entitlements for irrigation storage are subject to federal flood control operations.
- Water stored for irrigation is often released downstream to vacate reservoir space for flood control.
- The Department of Water Resources does not reset the quantity of water accounted to the state-based water rights at the time of the federal storage releases, and, even during flood control operations, continues to count inflows to the reservoir against satisfaction of the state-based storage water rights when the storage water rights are in priority.
- The method of accounting for storage has been in place in the Boise River Basin since at least 1986. Many storage water users may not have understood the way IDWR has accounted for satisfaction of the Boise River storage water rights when there are flood control operations.
- The conflict between satisfaction of state-based storage water rights and federal flood control operations only occurs in years when there is ample snowpack to fill the reservoirs.
- A deficiency in reservoir storage is nearly always the result of a low snowpack when there is no flood control operation by the federal government.
- In the Boise River Basin, the federal government indemnifies the water users against an under-prediction of refill of space vacated for flood control for up to 60,000 acre-feet. Since 1989, the storage contract holders have not been penalized for any shortfall in a full storage allotment when there has been sufficient snowpack to fill the Boise River reservoirs.
- For 28 years, water users, both storage contract holders and natural flow right holders, have relied on the present accounting system. Changing the accounting would reward some water users at the expense of other water users.
- The physical features of, the location of dams and reservoirs within, and the water rights for diversion within each river basin are unique and create accounting complexities that require an individual analysis of accounting so the "Director [can] use . . . his information and discretion to provide each user the water it is decreed."
- The Director has created a forum (contested cases) so the water users and the Department can present evidence about how storage water rights are satisfied.