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.	)	**SECOND AMENDED 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 and 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 26, 2004, the Director issued an order, sent to the Owner by certified mail, directing the Owner, in part, to:

   a. complete repairs to nine buttresses;

   b. construct additional spillway capacity; and

   c. verify functionality of the emergency warning system.

3. On March 29, 2004, one of the Owner's consultants, Marilyn Broek, P.E., submitted a proposed design for additional spillway capacity. Department staff reviewed the design and determined that it did not meet the required hydraulic criteria, and the design was not approved. Department staff met with Ms. Broek on April 8, 2004, to discuss the required hydraulic criteria and the proposed design. Ms. Broek committed to perform additional analysis and to submit a new proposed design.

4. On April 13, 2004, Department staff inspected the repair work completed on nine buttresses of Fish Creek Dam and found the repairs to be satisfactory.

5. On May 12, 2004, Department staff witnessed a test of the emergency warning system ("EWS") and met with the board of directors of the Owner. The test confirmed that the EWS was functioning, but not at its full design capacity. At the meeting, the requirements of the order of February 26, 2004, for additional submittals and for authorization to store water beyond October 31, 2004, were explained and discussed.

6. On May 30, 2004, Marilyn Broek submitted a plan for rehabilitation of Fish Creek Dam on behalf of the Owner. By certified mail dated July 29, 2004, the Department approved the plan with requirements for additional information to be provided by the Owner.

7. On October 26, 2004, 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. another buttress (No. 52) was found to have developed a hole completely through the buttress due to continuing concrete deterioration;

d. the EWS was not operational, and had been removed for diagnostics and repair;

e. no additional rehabilitation work had been completed since the repairs to nine buttresses were completed in early 2004; and

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

8. On December 10, 2004, the Director issued a Final Order withholding approval to store water behind Fish Creek Dam until the Owner took actions to decrease the threat posed to life and property associated with the storage of water and the potential failure of the dam.

9. On December 22, 2004, the Owner filed a Petition for Reconsideration with the Director outlining proposed remedial measures, engineering studies, and funding assistance, and seeking the Director's approval to store water behind Fish Creek Dam.

10. On January 10, 2005, the Director issued an Amended Final Order requiring certain actions to decrease the threat posed to life and property associated with the storage of water and the potential failure of the dam before approval to store water behind Fish Creek Dam would be granted.

11. On February 10, 2005, another of the Owner's consultants, Brockway Engineering PLLC, presented an engineering report and preliminary construction plans with

technical specifications for construction of additional spillway capacity in accordance with the requirements of the Amended Final Order of January 10, 2005. The Owner also presented documentation showing that repairs to buttress no. 52 had been satisfactorily completed.

12. On February 14, 2005, the Department completed its review of the preliminary report, plans, and technical specifications described in Finding No. 11. The Department's comments were conveyed to Brockway Engineering by telephone on February 16, 2005, and on February 17, 2005, the Department approved final plans and specifications.

13. On February 16, 2005, the Owner filed a Petition For Modification of the Amended Final Order outlining actions the Owner has completed and will complete on or before March 8, 2005, and requesting authorization to store water upon completion of specific modifications to the dam. An Affidavit of Charles G. Brockway and a report titled "Fish Creek Dam Emergency Spillway Modification: Evaluation of Flood Risk During Construction" were included with the Petition.

14. 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 was to have been performed in 2004;

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

CONCLUSIONS OF LAW

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

2. Idaho Code § 42-1719 requires that a certificate of approval be issued by the Director to lawfully impound 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 final order issued by the Director on February 26, 2004, authorization to store water at Fish Creek Dam expired on October 31, 2004.

4. Idaho Code § 42-1712 provides that an owner who desires to repair a dam that is 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.

5. The Department has reviewed the Affidavit of Charles G. Brockway and the report titled "Fish Creek Dam Emergency Spillway Modification: Evaluation of Flood Risk

During Construction" submitted with the Petition For Modification of the Amended Final Order filed on February 16, 2005, and finds the conclusions and findings contained therein to be reasonable and satisfactory.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Upon reasonable completion of the concrete demolition portion of the spillway modification, the Owner shall notify the Department and call for an inspection of the completed work.

2. If the Department finds the concrete demolition work reasonably complete and satisfactory, interim authorization to store water will be granted on behalf of the Director at that time, and the Owner will be allowed to close the outlet valves at Fish Creek Dam.

3. If authorization to store water is granted by the Director, the Owner shall conduct a full test of the emergency warning system once every 2 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 100 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 100 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.

4. If authorization to store water is granted by the Director, the Owner shall monitor reservoir water levels and seepage once each 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 steps 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.

5. Authorization to store water granted under this Order, will be valid through October 31, 2005. Future authorization to store water will be dependent upon the Owner's progress in completing the following actions:

a. perform a seismic analysis in accordance with the Department's dam safety criteria for existing large, high-hazard dams (Rule 55.01(e), IDAPA 37.03.06);

b. rehabilitate the arches and the buttresses in the maximum height section of the dam to provide adequate factors of safety in accordance with the Department's dam safety criteria for existing large, high-hazard dams (Rule 55.01(e), IDAPA 37.03.06).

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

6. 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.

7. 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 22nd day of February, 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of ~~December, 2004,~~ February, 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:

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PRESIDENT
FISH CREEK RESERVOIR COMPANY
PO BOX 282
CAREY, ID 83320

IDWR - SOUTHERN REGION
1341 FILLMORE ST, SUITE 200
TWIN FALLS, ID 83301-3380

CHARLES G. BROCKWAY, P.E.
BROCKWAY ENGINEERING, PLLC
2016 WASHINGTON STREET NORTH #4
TWIN FALLS, ID 83301

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources