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 comes 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 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. By certified mail dated October 31, 2003, the Director sent a show cause order directing the Owner to explain within 30 days of the order why the reservoir should not be restricted to a gauge height of 67 feet, and why the dam should not be breached to maintain the reservoir at the restricted elevation. The show cause order cited the poor condition of the dam, the low reliability of the emergency warning system, and failure of the Owner to submit a plan of rehabilitation.

3. On November 25, 2003, the Department held a compliance conference at its main offices in Boise with representatives of the Owner.

4. At the compliance conference, the Department representatives stated that the restricted height of the reservoir was based on the location of holes in severely deteriorated buttresses, and that the requirement for breaching was based on the inadequate discharge capacity of the existing reservoir outlet.

5. Representatives of the Owner stated that to avoid overtopping the dam, they would monitor the hydrologic conditions in the drainage basin closely and operate the reservoir accordingly. The representatives also stated that they wanted to avoid having to breach the dam. They did not submit any plans for rehabilitation at the compliance conference.

6. The Department representatives stated that monitoring hydrologic conditions in the drainage basin is not an adequate means of ensuring that the dam will not overtop during a flood event. Some physical means of passing a flood will be required to store water in Fish Creek Reservoir above the gauge height of 67 feet.

7. Following the compliance conference, the Department granted interim authorization on December 1, 2003, to immediately begin storing water Fish Creek Reservoir subject to the following conditions:

(a) the level of water stored in the reservoir cannot exceed the gauge height of 67 feet;

(b) by January 15, 2004, the Owner must submit a full response to the show cause order issued on October 31, 2004; and

(c) the interim authorization to store water expires on January 15, 2004.

8. On December 24, 2003, the Owner's consulting engineer, Marilyn Broek, P.E., submitted a written plan with sketches describing repairs that the Owner proposes to make to nine buttresses with severe deterioration.

9. As requested by the Department, Marilyn Broek, P.E., submitted additional information related to the proposed repair work as follows:

(a) on January 8, 2004, written specifications were submitted for the concrete work associated with the proposed repairs; and

(b) on January 16, 2004, written details and clarifications were submitted regarding construction procedures and quality control for the proposed repairs.

CONCLUSIONS OF LAW

1. Idaho Code § 42-1717 vests jurisdiction over the 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. 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.

ORDER

IT IS, THEREFORE, HEREBY ORDERED as follows:

1. The show cause order issued by the Director on October 31, 2003, is set aside.

2. The Director approves the plans submitted by the Owner's consulting engineer, Marilyn Broek, P.E., to repair nine severely deteriorated buttresses. The Director considers these repairs, however, to be interim remedial measures only and not a permanent rehabilitation of these critical components of Fish Creek Dam.

3. Prior to the onset of spring runoff, the Owner shall:

   (a) Complete all repairs to the nine buttresses in accordance with the approved plans;

   (b) Construct additional spillway capacity to provide a total capacity of 1,170 cfs (the estimated 100-year flood discharge) with the water level at the crest of the dam (no overtopping).

4. In the event that item 3(a) above is not completed prior to the onset of spring runoff, then the Owner shall install an uncontrolled outlet through the dam with the invert at either the gauge height of 67 feet, or at the lowest elevation of completed repairs, whichever is higher. The capacity of the outlet shall be 1,170 cfs (the estimated 100-year flood discharge).

5. Interim authorization to store water is granted subject to the following conditions:

   (a) If all repairs are completed, the maximum water level in the reservoir shall be limited to the spillway crest elevation, as established by the completion of item 3(b) above;

   (b) Use of flashboards in the spillway is not allowed under any circumstances;

   (c) A representative of the Owner must visually inspect the downstream face of the dam daily when the water level in the reservoir is greater than the gauge height of 67 feet (21 feet below the top of dam).

6. Before the reservoir water level reaches the gauge height of 67 feet, the Owner shall conduct a full test of the emergency warning system. If 100 percent operational status is confirmed, the Owner must submit documentation to the Department substantiating successful completion of the test. If all features of the system are not 100 percent functional, the Owner must repair and retest the system as quickly as possible. If all features of the system cannot be made 100 percent functional, the Owner must contact the Department immediately.

7. When the reservoir water level is above the gauge height of 67 feet, the Owner shall conduct a full test of the emergency warning system once every 2 weeks. When the reservoir water level is above the gauge height of 75 feet, the Owner shall conduct a full test of the emergency warning system once every week. If 100 percent operational status is confirmed, the Owner must submit documentation to the Department substantiating successful completion of the test. If all features of the system are not 100 percent functional, the Owner must repair and retest the system as quickly as possible. If all features of the system cannot be made 100 percent functional, the Owner must contact the Department immediately.

8. The Owner shall submit a schedule to the Department for developing plans for the full, permanent rehabilitation of Fish Creek Dam for review and approval no later than May 31, 2004.

9. Authorization to store water beyond October 31, 2004, will be dependent upon a review of the condition of Fish Creek Dam by the Department and on progress made by the Owner to rehabilitate other severely deteriorated components of the dam, including the arches in the maximum height section.

10. The performance of inspections, surveys, or investigations by the Department shall in no way relieve the Owner of its obligations or liabilities incident to ownership or operation of Fish Creek Dam or any damage caused by the contents of the reservoir.

11. The Owner's failure to comply with the conditions of this Order, may result in the opening of the dam outlet valves and judicial action by the Director to enforce the terms of this Order and the Safety of Dams Act.

12. 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 26 th day of February, 2004.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 2004, 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
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TWIN FALLS, ID 83301-3380

MARILYN BROEK, P.E.
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Victoria Wigle

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Administrative Assistant to the Director
Idaho Department of Water Resources