

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 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, the Owner’s consultant, 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 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 emergency warning system is not operational, and has been removed for diagnostics and repair;
- e. no additional rehabilitation work has 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. 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.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Within one week of the date of this order, the Owner shall place both outlet valves in 100% full open position.
2. Until such time that authorization to store water is granted, the Owner shall not through action or inaction cause water to be stored at the dam. Storage of water without authorization is in violation of Idaho Code § 42-1719.
3. 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, IDAPA 37.03.06); and
 - c. restore the emergency warning system to full operating status (Rule 55.01(d)(iv)).

4. The performance of inspections, surveys, or investigations by the Department shall in no way shift or 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.

5. The Owner's failure to comply with the terms of this order, may result in judicial action by the Department to enforce the terms of this order and the Safety of Dams Act and may further require that Fish Creek Dam be breached or otherwise modified in order to restrict the reservoir storage elevation to a level that can be safely maintained with adequate factors of safety in accordance with the Department's dam safety criteria for existing large, high-hazard dams (Rule 55.01, IDAPA 37.03.06).

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 10th day of December, 2004.



KARL J. DREHER
Director

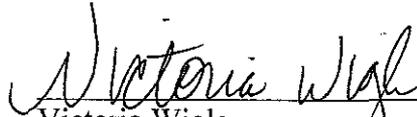
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December, 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:

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

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

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



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