



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

✓DET

Carter

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Department of Water Resources

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 7, 2000

MICHAEL A DEMERSE
SHEPP RANCH
HC 83
CASCADE ID 83611

Re: Water Use Complaint for Papoose Creek

Dear Mr. Demerse:

This office received your letter on September 29, 2000, regarding the use of water from Papoose Creek. You were concerned about the availability of water to supply your irrigation right from the creek, license no. 78-07149. Your water right has a 1980 priority or seniority date.

You indicated that a neighbor, Mr. Earl Futter, altered the streambed upstream from your property. You also said that Mr. Futter diverted water from the creek for irrigation use, preventing the use of your water right.

I contacted your renter and conducted an inspection on October 27, 2000. The results of the inspection are attached for your consideration.

Mr. Futter appears to own water right no. 78-04140, a 1971 irrigation right from Papoose Creek. The right is a statutory claim, which means it has never been verified. This type of right can be verified by an adjudication. The ongoing Snake River Basin Adjudication (SRBA) will determine the validity and accuracy of Futter's right during the 2004 to 2005 period according to the current SRBA schedule. An important component of water rights is that senior rights are entitled to water before junior rights can be exercised ("first in time, first in right").

As you can see from the inspection summary, I could not conclude that an improper diversion of water was adversely affecting your water right. I consulted with other staff from the Idaho Department of Water Resources (IDWR) regarding the earth dam built by Futter (?) about one-half mile upstream from your property. It appears the dam is not within IDWR jurisdiction based on the following points:

- The purpose of the dam is not to impound water - IDWR dam safety program is not applicable.
- The dam is not used to divert water from the stream - IDWR water right program is not applicable.
- The dam is not constructed on a perennial reach (defined by USGS topographic map) of Papoose Creek - IDWR stream channel alteration program is not applicable.
- The dam appears to be, or will become, a road grade outside of IDWR jurisdiction.

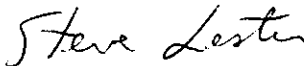
To comply with Idaho statutes and IDWR rules and regulations, the following steps are recommended to address the situation:

1. Futter should file a SRBA claim for right no. 78-04140. The water right will be determined to be invalid in the SRBA process unless an adjudication claim is filed.
2. Futter should explain his diversion from the creek sufficiently to show he does not divert in excess of his water right. This can be done in the course of filing the SRBA claim or can be done under point #3.
3. IDWR should make another field inspection during the irrigation season when Futter is present.
4. Demerse should amend SRBA claim no. A78-07149 to correct the Section 19 description, which appears to be an error in the water right license and adjudication claim records.

Thank you for your patience in this matter. I will contact you and Mr. Futter early in the 2001 irrigation season to arrange another visit when water is plentiful. Ideally, both owners would be irrigating during the visit to sharpen my focus on the issues at hand.

Please contact me at your earliest convenience if you need more information.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosure

Cc: Earl Futter

PAPOOSE CREEK FIELD INSPECTION OF DEMERSE SITE

Prepared by Steve Lester, IDWR Western Region
October 31, 2000

I visited the site on October 27, 2000. Demerse's renter showed me around the area. Mr. Futter was not home, and the renter said Futter had been gone for a few days.

Research prior to the trip showed these Papoose Creek water rights for the two owners:

- Futter, 78-04140 for .14 cfs to irrigate 10 acres, diverted and used in SENE S. 24. No SRBA claim has been filed for this right.
- Demerse, A78-07149 for .14 cfs to irrigate 4.5 acres, diverted in SENE S. 24 and used in that tract plus SWNW S. 19. The license and SRBA claim mistakenly identify SWNE instead of SWNW S. 19.

The renter told me the following things.

- The area experienced a massive landslide and accompanying flood in January 1997.
- Papoose Creek historically sinks and reemerges in spots but has not done that at Demerse's property.
- The creek usually has an adequate supply of water for most of the irrigation season.
- Futter built some type of dam around late spring, and the dam is located about ½ mile upstream.
- By mid-June of this year, the creek was not flowing at the Demerse diversion, which is located at the upper end of Demerse's property adjacent to lower end of Futter's field.
- Very minor flow was noticed in the creek by early August.
- Futter was working in the creek again (with his cat) around late August-early September and flow in the creek once again dried up.
- Futter irrigates land upstream and possibly downstream from Demerse's place.
- Demerse diversion has not had creek water for most of the 2000 irrigation season.

I found the following conditions during the inspection:

1. A large earth and rock dam straddled Papoose Creek in NWSE S. 24. Flow passed through the dam via a 3' culvert. No diversion of water occurred from or near the dam. The dam appeared to be a partially completed road grade of questionable stability. A spillway or other bypass was not found. The dam did not appear to be built to store water.
2. Futter had a 4" gated pipe at the head of his field above Demerse's place.
3. The creek had a modest flow at the dam and along the border of Futter's field above Demerse's place. As I walked the creek along Futter's field, the flow gradually diminished and finally stopped (sank?) just upstream from the Demerse diversion.
4. No other Futter diversions were found.
5. I did not observe any way in which creek water was diverted from the stream channel along Futter's field (no buried pipe, holes etc. along the creek in that reach).
6. At least on October 27, the lack of water at Demerse's diversion appeared to be a natural event.
7. No active irrigation or diversion of water from the creek was noted during the visit.

See the attached map of the site.

