



State of Idaho

DEPARTMENT OF WATER RESOURCES

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July 11, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

VIA FACSIMILE (208) 886-2451

Lee R. Peterson, Watermaster
Water District 37 & 37M
P.O. Box T
Shoshone, Idaho 83352

Re: Administration of Big Wood River – Futile Call

Dear Lee:

Your letter dated July 10, 2002, asks for guidance concerning distribution of the flow of Big Wood River in the event that the water supply is insufficient to reach the diversions of senior priority rights decreed from the river downstream from the District 45 Canal near Bellevue. Without specific details concerning the rights calling for water and the flow rates/stream losses existing at this time, I can only provide the general framework for addressing a futile call.

1. A watermaster has the responsibility to distribute available natural flow to the holders of water rights asking for water for use in accordance with their rights. In Idaho, this distribution must be in accordance with the priorities of the rights – a right with the earlier in time priority date must be fully satisfied in accordance with calls for water under the right before water is distributed to another water user calling for water under a right with a later in time priority date. In a stream with large channel losses such as the Big Wood River, it can be necessary to curtail significantly more diversion under upstream junior priority rights than is needed to supply senior downstream rights. Although this seems like an inefficient use of the available water supply, the senior user's call must be satisfied unless the amount of water reaching the senior user's point of diversion is insufficient to make beneficial use under the right.
2. If curtailment of all upstream water rights having a priority date junior in time to that of the downstream senior right for which water is called for does not result in flow of useable amounts reaching the point of diversion for the senior water right, the call can be determined to be futile. When this determination has been made, the available water can then be delivered in accordance with priority of right to the upstream junior rights. The determination of whether the flow received by the senior user is a useable amount can be difficult

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3. Because of factors such as the variance in stream flow during the day and commingling of water from other sources for use by the holder of the senior right. If the senior user does not agree that the call is futile, you should consult with the department before making a decision to curtail distribution to the senior user.
4. The responsibility for determining whether the river needs to be blocked off rests with the water user. If after you determine that water is available for diversion, the water user has the responsibility to provide the necessary check structure, headgate and measuring device. Under Idaho law (Section 42-3806, Idaho Code) the wateruser is authorized to do work in the stream channel as necessary to divert the water. Other approvals may be needed from other state and federal agencies. Any water diverted to junior priority water rights under a futile call must be beneficially used by those junior priority rights.

Please give me, Tim Luke or Allen Merritt a call if we can provide assistance on determining the appropriate action on specific distribution concerns.

Sincerely,

Dictated by Norm Young
and finalized without
signature to avoid delay

Norman C. Young
Administrator
Water Management Division

Cc: Tim Luke
Allen Merritt.