

WD
April 16, 2009

TO: Tom Bassista
IDWR Eastern Regional Office
900 N. Skyline 83402-6205

RECEIVED
APR 20 2009
DEPARTMENT OF
WATER RESOURCES

FROM: Tom Waddoups
22914 N. Shorthorn Ct.
Sun City West, AZ 85375

RE: Letter dated January 12, 2009, concerning 2009 irrigation season and alteration of the North channel of Antelope Creek located near Grouse, Idaho

The 2009 irrigation season will begin in approximately two week and I have not received a response to my letter dated January 12, 2009.

It is my understanding that water right holders are allowed to alter a natural stream flow pursuant to Idaho Code 42-3806. The statute does not refer to distance in maintaining a stream channel for delivery of water under a vested water right, however the statute includes other provisions that affect water users on Antelope Creek. Referring to only one provision of Idaho Code 42-3806 will encourage water users miles down stream from the natural north and south channels of Antelope Creek located near Grouse, Idaho to alter the natural channels.

To provide transparency and insure that all provisions of Idaho Code 42-3806, Idaho Administrative Code, WD34 rules and IDWR memorandums are applied fairly and consistently, the water master and water users should be apprised of the following laws and rules that affect water right holders in the Antelope Creek drainage.

Alteration of Channels of Streams

1. Idaho Code 42-3806, states, "This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the State of Idaho or the United States, nor to *interfere* with the diversion of water from streams under existing or vested water right or water right permit for irrigation."
2. "No permit shall be required from a water user or his agent to *remove any obstruction* from any stream channel, if such obstruction *interferes with, or is likely to interfere with*, the delivery of, or use of, water under any existing or vested water right."
3. Preliminary Order in the Matter of Stream Channel Alteration Permit, #34-S-317 in the name of Jack Harrop. The hearing officer cited Section 42-3806, Idaho Code, while requiring a stream channel alteration permit for the construction of a sill in Antelope Creek.
4. Alteration of a natural stream to satisfy a delivery call requires measurements to determine if alteration resulted in an increase or decrease in water realized at the place of use. Item #3 under Measurements and Deliverability lists the requirements to determine deliverability of water to a user's place of use.

Acceptable Management

WD34 Procedural Manual, Paragraph 3.3.1, "Informal agreement or arrangement is acceptable where all water users are satisfied with water delivery situation. Any method the water district chooses to meet this goal is acceptable if ALL water district patrons agree to it and it follows existing state law."

Water Delivery Call, Curtailment, Measurements, Deliverability and Futile Call

1. Water Delivery Call

a. WD34 Procedure Manual, Paragraph 7.7.3. states "The water master will not deliver water to a user until that user has called for delivery of the water right."

Does not
to this
rule...

b. IDAPA 37.03.12.040.01.b states, "All water deliveries must be called for by the water user at least 48 (in 48) hours in advance of the actual water delivery."

c. IDAPA 37.03.12.040.04 Initiation and Duration of Surface Water Allocation for Irrigation, states, "Any time after May 1 an irrigation water user can make a delivery call on the natural flow if the water user can make beneficial use of the water for irrigation. If sufficient natural flow exists to deliver the called for water right in a usable amount to the user's place of use the water master shall deliver the rights."

2. Curtailment

IDAPA 37.03.12.020.04 Junior water rights are curtailed if water is deliverable to the water user's place of use making the delivery call.

3. Measurements and Deliverability of Curtailed Water

exp. WD
Rule @ N.G.

a. Measuring devices and control works are required where natural flow is diverted from any natural channel and where natural flow is diverted from a canal and other water conveyance entity. Diversion points are referred as river headgates and field headgates.

N/A
to Article
C2

b. IDAPA 37.03.12.035.07 states, "Irrigation districts, canal companies and other water conveyance entities diverting from any natural channel through which natural flow is being carried shall install and maintain measuring devices and control works." "....measuring devices and control works thus installed and maintained will replace the requirement of individual measuring devices and control works at these locations for each water user."

42-2001
N/A - only refers
to
watermaster
DISTRICTS

c. Idaho Code, Section 42-907, Measurement of Water, (1) "It shall be the duty of the district hydrographer to (a) Measure the diversion from the water supply within the district by EACH appropriator or water user."

"for" each user
NOT by each
user.

d. WD34 Procedure Manual, Paragraph 3.5.5, states, "The field records will clearly indicate the priority date in effect each day, the total canal heading, and the amount of flow being diverted for each user on the canal."

e. WD34, Procedure Manual, Paragraph 7.7.4, "A natural flow water right deliverable through a lateral or canal of water conveyance entity shall be assessed a conveyance loss for the canal through which the water right is delivered."

This means

N.A. RE Limited to full right

C Canal Nat, NOT full N.G.

Re: WM/WD is @ N.G. only!

9/1/05, also Re: Futile call, NOT Reg. Delivery

f. Memorandum, Sept. 5, 2005, Tim Luke to WD34 watermaster, states, "Delivery records must include deliveries made before and after curtailment action in response to the call by the BLR water user."

4. Futile Call for the Delivery of Surface Water

a. IDAPA 37.03.12.020.04 states, "When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water right, without unreasonable waste as determine by the Director, the water master will not curtail the junior water rights in a futile effort to deliver water to the senior water rights." wm

Records

a. WD34 Procedure Manual, Paragraph 3.5.2, Calls for Water, states, "The water master must maintain a record of calls for water. This record will be in a form of a spreadsheet listing all WD34 water right holders and noting the dates each user called for their water and the dates each user called their water off."

b. WD34 Procedures Manual, Paragraph 7.7.3, states, "The water master will not deliver water to a user until that user has called for delivery of the water right."

c. WD34 Procedure Manual, Paragraph 3.5.5, Field Records, states, "the field record will clearly indicate the priority date in effect each day, the total canal heading, and the amount of flow being delivered *for each user on the canal.*"

d. Open Records Law, Idaho Code, 9-338, Right to examine public records.

e. Idaho Code 9-339, Response to Request for Examination of Public Records. If a request is denied, the person making the request must be notified in writing within the stated required time.

Memorandums

1. Memorandum Sept. 1, 2005, Tim Luke to WD34 Water master. A good explanation of the procedures for a delivery call, curtailment, deliverability resulting from water rights curtailed, delivery records including deliveries made before and after curtailment and futile calls.

2. Memorandum, May 19, 2006, Nick Miller to Mr. Foster and Mr. Duke, Recommendations to WD34.

a. A clear understanding of how the WD34 presently operates would improve the ability of water users to interpret WD34 records and to identify problems.

b. The only tool available to resolve disputes are records that document measurements of water delivered.

I would appreciate a response confirming or correcting my understanding of the above rules and laws and if these rules and laws apply to all water users that have diversion points adjacent to or in the immediate vicinity of the natural channel of Antelope Creek as well as

water users located ten to thirty miles downstream.

If a response to this memorandum is not received I will conclude the water master is responsible to deliver water in accordance with the above rules and laws and the law applies to all water user in the Antelope Creek drainage.

Sincerely,


Tom Waddoups

cc: Nick Miller
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