



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Date: June 9, 2011

Kevin Lakey
Watermaster WD37 & WD37M

Hand delivered

RE: Watermaster Instruction regarding Purdum Slough
Stream Channel Permit exemption

Kevin,

You recently provided comment for Transfer No. 76280 filed in the name of Cottonwood Creek Homeowners Association as follows:

I do not oppose approval of this application if it is conditioned as follows:

Since 2006 the Big Wood River has cut a deeper channel at the location where the Purdum Slough takes out of the Big Wood River. This has made it difficult to keep water in the Purdum Slough when the River Flows drop. Consequently, Senior decrees on the Purdum Slough are undeliverable when they are still being delivered on the main stem of the Big Wood River. There has been some discussion about the water right holders being able to physically dam the Big Wood River in order to keep water in the Purdum Slough when their point of diversion is listed as a point downstream in the slough. If at all possible, I would like IDWR to clarify in the conditions as to the water right holder's legal ability to change the Big Wood channel in order to get their water out of the Big Wood River.

IDWR has considered your comments and finds it reasonable to provide clarification to the watermaster and document the situation on the Purdum Slough for waterusers. IDWR believes it would be more appropriate to provide general instruction to the watermaster that can be applied to other rights with points of diversion along the Purdum Slough.

As you know, historically the Purdum Slough has been an open side channel of the Big Wood River. Water has flowed freely into the Purdum Slough from the Big Wood River and water rises in the slough due to elevated groundwater in the area (the slough is a gaining reach). Historically the watermaster has delivered water to several headgates along the slough (Osborn 24, Purdum 25, Campion Pump 22P2, Mac Pump 26, Purdum 25A). The water rights associated with these diversions are decreed with the Big Wood River as the Source. There has been no regulation at the head of the slough where it is directly connected to the Big Wood River. In the SRBA, IDWR recommended points of diversion for most rights as the point where the water is taken out of the slough, such as described above. However a few were recommended and decreed in error with a point of diversion at the head of the slough. (I understand IDWR may address these errors with the SRBA court.)

Historically IDWR has treated the Purdum Slough, and other similar sloughs such as the Broadford Slough, as natural river features subject to the Stream Channel Protection Act (Title

42 Chapter 38 of the Idaho Code) and subject to IDAPA 37.03.07 (Stream Channel Alteration Rules). These natural sloughs support fisheries, wildlife and aquatic habitats. They provide recreation, aesthetic beauty and enhance water quality. Historically there have been efforts by some water users to seek classification of these sloughs as merely man-made conveyances to avoid regulation of these sloughs under the Stream Channel Protection Act. On a map they may appear to be water ditches or canals and are easily confused with man-made conveyances.

As you point out in your recommendation the Big Wood River is becoming more incised at the head of the Purdum Slough due to natural processes, thus potentially diminishing the natural free flow of water from the Big Wood River into the slough. Some water users on the Purdum Slough may feel that having a point of diversion listed at the head of the slough on their water right provides them more opportunity to maintain adequate flow into the slough. They may theorize that the water right diversion exemption in the Stream Channel Protection Rules (IDAPA 37.03.07.025.03) requires such a point of diversion listing. IDAPA 37.03.07.025 states:

Cleaning , Maintenance, Construction or Repair Work. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit.

Under this exemption the Department's opinion is that an exemption from obtaining a Stream Channel Alteration permit from the state may be obtained for work on the Big Wood River or on the head of the Purdum Slough limited to work necessary to maintain adequate flow into the Purdum Slough to provide water to fill decreed rights that are in priority but unable to be delivered water due to lack of flow. **** Note that this limited exemption is not carte blanche approval and work to dam the entire Big Wood River at the head of the Purdum Slough would not be considered favorable. To assure an exemption is appropriate, a proposal should be presented to the Department to allow adequate evaluation of work that is contemplated. **** Note that other approvals are required from the Corp of Engineers and Blaine County regardless of state exemption. Even if any proposed work does not qualify as exempt, an application for a Stream Channel Alteration permit may still be submitted for consideration under standard review.

By copy of this letter I will share these instructions with interested water users as needed.

Respectfully,



Allen Merritt, PE
Southern Region Manager

CC: Tim Luke, Aaron Golart, Jeff Peppersack, John Homan – IDWR
Jim Speck