

MIKE DOTZENROD
COUNTY DIVIDE RANCH LLC
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DARLINGTON, IDAHO 83255

RECEIVED

JUL 12 2011

DEPARTMENT OF
WATER RESOURCES

July 5, 2011

Nick Miller
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-6700

Mr. Miller,

I have been informed through an intermediary that we need to form questions pertaining to the continued blockage of the North Channel of Antelope Creek by an earthen structure (dam) at the confluence of the North Channel as it passes underneath the Blaine Diversion (U.C. Canal) and the 3-in-1 Canal, both owned and operated by the Big Lost River Irrigation District. This dam was put in place by Loy and Byron Pehrson.

The process of challenging the lawfulness of this dam has raised many questions about how you and the Department of Water Resources (IDWR) have handled the matter in my opinion. The following will be an effort to clarify my understanding of these questions.

After my questioning of Loy Pehrson about the legality of the dam and asking him to remove it sometime during the middle of May 2011, he immediately contacted you to intervene, which you subsequently did. Protocol of handling disputes within District 34 is: first to go to the Watermaster, and, if not solved there, disputes are to be taken for review to the District 34 Advisory Committee for mediation. These are rules that you (IDWR) and Loy Pehrson as former chairman of said committee established. Why were they not followed?

After your personal visit to the District and the dam site, your effort to mediate failing, you informed me, on the Friday before Memorial Day, that IDWR had made the discretionary decision, through the State Attorney General's office, that the Pehrson brothers did not need a stream alteration permit because a map, later learned to be a 1969 USGS map, showed Antelope Creek to be an intermittent stream. (Permits being only needed on streams of continuous flow).

That USGS map shows the South Channel of Antelope Creek to be an intermittent stream, not the North Channel, which is shown as a solid line, demarking the division of Custer and Butte Counties, and denoting it thus as the Main Channel. Does the map technically show the North Channel as an intermittent stream? No.

Everyone in the valley knows Antelope Creek does not connect with the Big Lost River during the winter months and is intermittent. But IDWR and the Army Corps of Engineers recently (in the last few years) fined and made individuals restore Spring Creek after they had farmed in it. Everybody here knows Spring Creek has not run on its own natural flow for decades. Yet, technically, Spring Creek is not a broken line on a map so it is deemed continuous. Its only connectivity is being bone dry, except when irrigation water is put into it, usually through the Eastside Canal. The North Channel of Antelope Creek is not a broken line either, so out of which discretionary hat did that channel get deemed intermittent and in no need of a stream alteration permit even though it does and has flowed intermittently and Spring Creek is deemed to flow like a continuous stream and has been bone dry of its own natural source water?

As you determined, Mr. Miller, the natural water flowing in the North Channel of Antelope Creek would back up and flow into the Blaine Diversion after being dammed at the downstream side of the North Channel water conduit under the Blaine and 3-in-1 canals. At least most of it did. When the water got high, flooding did occur on my property and on that of a neighbor's to the south of the channel. If the weather conditions had been different and hot temperatures had occurred in early June, as in years past, we would have experienced genuine flooding.

You expressed concern that if the dam was removed during this runoff the Pehrsons would experience flooding. The dam broke one morning, June 9th, and the creek didn't flood the Pehrsons. They immediately rebuilt the dam and made it bigger and better. They didn't experience flooding last year, 2010, when enough water ran in the North Channel that what didn't flow underneath the canals backed up and flowed into the Blaine Diversion as it was designed to do. Below the earthen dam is a large rock that has been in place for some years, partially blocking and backing up water under the canals (responsible for erosion seepage into the 3-in-1?) This plus the debris plug at the entrance to the conduit allowed only so much water to go through and it did not flood the Pehrsons. Enough water went through the year before, 2009, that the Watermaster, Bob Shaffer, found someone downstream on the North Channel with a tarp dam flood irrigating. If you look at the trees just upstream from the conduit (see enclosed photo) you can see that they are still alive and have several years of obvious leaf

growth. How can these trees still be alive if no water had passed by for decades as the Pehrsons allege?

You justified the water being diverted by the dam into the Blaine Diversion as beneficial use because it would connect to the South Channel by way of the Blaine Diversion. For over a month it flowed and did not connect. You claimed it would have if pits had not been dug in the Blaine Diversion by the Recharge Committee- such action having been overseen by Loy Pehrson. If you really look at the enclosed pictures and know how far it had to go, it would have taken more weeks to get there. Is this beneficial use of water? Under what diversion permit was this waste of water allowed to happen? Under any normal circumstances this would have been a futile call weeks ago. (It is now connected with the South Channel after recharge water was put in the head of the Blaine Diversion and water from the South Channel was diverted into the Blaine Diversion for either excess natural flow or recharge. When this diversion takes place it backs up the canal all the way back to the North Channel. The magic we have in this valley, to run water seemingly uphill.)

When this water, or at least much of it, was not allowed to flow downstream, what was the injury to property downstream? If allowed to flow it travels and discharges into a wetlands just above the Darlington Sinks channel of the Big Lost River. What injury happened not only to downstream property of the North Channel of Antelope Creek but also to users of the Big Lost River when this channel was not allowed to flow to it?

Maybe the most simple question is: if water has not been flowing in the North Channel, why did the Pehrsons block the channel this year before the irrigation season began? Why did Mr. Pehrson say, when asked why he blocked the channel, that the Watermaster told him to? The Watermaster he is referring to is not this year's Watermaster, Roger Totten, but last year's Watermaster, Jay Jensen. Under what authority did former Watermaster Jensen have to authorize such a deed? It appears the Pehrsons do not want any water flowing through their corrals. I truly sympathize. But doesn't the action of blocking a stream just bring more attention to the situation?

The dam has now blocked the North Channel for over two months. Luckily the weather with the snowpack had created strong, steady flow. Most of the water going into the Blaine Diversion could have made it into the wetlands above the river and been beneficially used as it charged the river. Maybe when everyone asks what all the water has been doing sitting in the Blaine

Diversion for the last two months, we can say that it is a water skiing canal provided by the Idaho Dam Waters Regulators.

Sincerely,

Mike Dotzenrod

Michael (Mike) J. Dotzenrod
07-08-11

cc:

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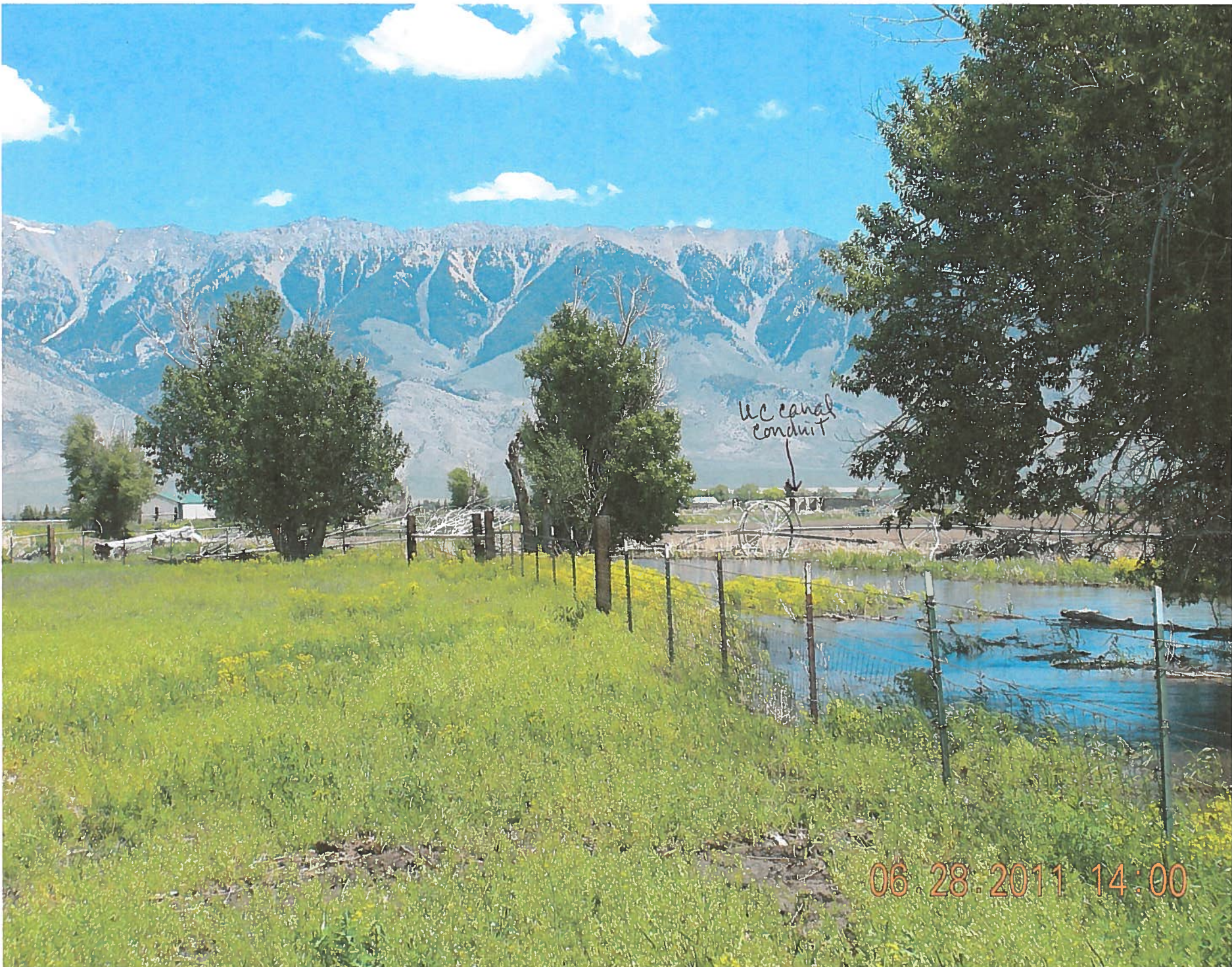
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live trees on North Antelope before UC canal



UC canal dry - facing south towards 3600 N road



uc canal dry beyond recharge pit - low water in uc before it

