



State of Idaho

DEPARTMENT OF WATER RESOURCES

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AUGUST 19, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

ROGER TOTTEN
WATERMASTER, WATER DISTRICT NO. 34
P.O. BOX 53
MACKAY, ID 83251-0053

RE: 2011 ANTELOPE CREEK FUTILE CALL REQUEST

Dear Roger:

This letter responds to your request for a futile call for delivery of water from Antelope Creek to senior users on the Big Lost River. You made the request during a telephone conversation yesterday and supplied delivery records and other pertinent information in an email later that day and another telephone conversation this afternoon. Given the information you have provided, the call for delivery of Antelope Creek water to users on the Big Lost River cannot be determined to be futile at this time. You must curtail the unauthorized diversions into the 3in1 and B&J canals immediately. If after curtailing those diversions, the creek has not connected with the river by Monday (August 22), you can submit another request for a futile call determination.

Based on the information you have provided, Antelope Creek is not flowing into the Big Lost River, and has not connected since prior to Tuesday, August 16, 2011. Furthermore, it appears that many of the water users on Antelope Creek are not diverting their in-priority water rights while they harvest their hay crops, so the demand and total delivery from Antelope Creek has been relatively small with all of the users reported to be diverting at or below the same priority date as the Big Lost River (10/22/1887 on August 18).

You reported that Antelope Creek is being diverted into both the 3in1 (4.2 cfs) and B&J (2.37 cfs) canals. No in priority water right exists that authorizes the diversion of Antelope Creek into either of these canals. Regardless of the reason for the unauthorized diversion of Antelope Creek into these canals, a futile call determination cannot be made while the diversions are occurring. If the diversions into those canals are simply out of priority or unauthorized diversions of water, then the diversions should be curtailed to determine if the creek connects with the river before a futile call determination can be made. Although I know of no legal basis for the practice, if Antelope Creek is being used to supply Big Lost River water rights in the B&J and 3in1 because it is believed to be a better use of water than diverting directly from the river, then users that hold senior water rights from the Big Lost River are benefiting from the regulation of junior users on Antelope Creek so a futile call is not justified. Regardless of the purpose or intent of the diversions into those canals, the diversions must cease immediately. If the creek does not reconnect with the river by Monday, August 22, you should submit another request for a futile call determination.

Mr. Roger Totten
August 19, 2011
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The flow in Antelope Creek will likely continue to decline, and the upstream, in priority demand on Antelope will increase as users on Antelope Creek finish their harvest and resume irrigating. So, it is unlikely that the creek (if it reconnects after curtailing the 3in1 and B&J) will remain connected for long and I anticipate a futile call will be available in the very near future. Please note that deliveries on Antelope Creek and tributaries must continue to be regulated to the same priority date as the Big Lost River until a the call is determined to be futile.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Miller", written in a cursive style.

Nick Miller

Water Distribution Section

cc: IDWR Eastern Region – Idaho Falls

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