

State of Idaho  
**Water District 1**  
900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718



RONALD CARLSON  
WATERMASTER

(208) 525-7172  
Fax (208) 525-7177

April 26, 2001

SCANNED

JUL 27 2023

2001

IDWR DIRECTOR  
KARL J. DREHER  
  
COMMITTEE OF NINE

CHAIRMAN  
Leonard Beck  
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Idaho Falls

Wayne Lincoln  
Filer

Albert Lockwood  
Eden

Ed Clark  
Ashton

Randy Bingham  
Manager  
Burley Irrigation District  
246 E 100 S  
Burley, ID 83318

Dear Randy:

In the case of Twin Falls Canal Company vs. Charles N. Foster (1913), certain water rights of Twin Falls Canal Company, Northside Canal Company, Charles W. Arthur, and the Secretary of the Interior of the United States are decreed. In his order setting forth the rights and how they are to be administered, Judge Edward Walters cites the 1909 Idaho Session Laws and orders the following, "the amount of natural flow to be determined as such natural flow would be, if unaffected by the diversion or acts of the parties hereto or any or either of them or by the release of stored water, the natural flow to which the Twin Falls Projects are entitled to be measured to them at Milner Dam."

Historically this provision has been addressed by charging seepage and evaporation losses from Lake Walcott to the Minidoka Canals offset by a credit for storage diverted and returned to the river between the Minidoka and Milner gages. As you are aware the evaporation from Lake Walcott during some years can exceed 30% of the water stored behind Minidoka dam. After reviewing this procedure with hydrologists at the state office of the Department of Water Resources (IDWR), we concluded that it is not equitable to charge all of the evaporation losses from Walcott to the Minidoka canals. Consequently, we are now distributing evaporation charges proportionally to all storage spaceholders in the system. However, the review that resulted in this change, among other evaluations now makes us question the justification of the continuation of the Minidoka return flow credit. In addition the Director of IDWR has advised me that, with the exception of inter-basin transfers, credits for return flows are not appropriate under the doctrine of prior appropriation. This letter is to make you aware that we are changing the water right accounting for the 2001 irrigation season to eliminate return flow credit and we will continue the procedure initiated last year of proportioning reservoir evaporation charges to all spaceholders.

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This change is in accordance with Water District and IDWR policy to distribute water using the best available technical information in accordance with the doctrine of prior appropriation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ron', with a large, sweeping flourish above the letters.

Ronald D. Carlson  
Watermaster

Cc: U.S. Bureau of Reclamation  
Karl Dreher



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

June 27, 2001

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

Burley Irrigation District  
c/o Roger D. Ling  
615 H Street  
P. O. Box 396  
Rupert, ID 83350

Minidoka Irrigation District  
c/o Kent W. Fletcher  
1200 Overland Avenue  
P. O. Box 248  
Burley, ID 83318

VIA FIRST CLASS MAIL AND  
FACSIMILE TO (208) 678-2548

VIA FIRST CLASS MAIL AND  
FACSIMILE TO (208) 436-6804

Re: Water Accounting for the Snake River – Lake Walcott to Milner

Gentlemen:

Thank you for meeting with me last Monday, June 18, to express your concerns regarding changes in the water accounting procedures for the 2001 water year. I wished it had been possible to have met again this week together with representatives from the North Side and Twin Falls Canal Companies. Unfortunately, the appropriate representatives from the canal companies were not available.

Although the Department of Water Resources and Water District 1 have implemented changes to the accounting procedures in the past without providing advance notice to the affected water users, this will no longer be our practice. In the future, we will provide notice of significant anticipated changes for an upcoming irrigation season no later than the first Committee of Nine meeting in February of that year. We will also distribute written summaries of significant anticipated changes with other information mailed each year in advance of the annual meeting for Water District 1. In the event that significant changes need to be made during an irrigation season, we will provide as much advance notice as practicable.

With regard to the Foster Decree dated June 20, 1913 (Twin Falls Canal Company vs. Charles N. Foster, et al.), the next to the last paragraph in part states:

. . . the State Engineer of the State of Idaho, or his duly authorized deputy, shall determine what part of the water flowing in Snake River at the Minidoka and Milner Dams, is storage waters, and what part is natural flow, . . . the amount of the natural flow to be determined as such natural flow would be, if unaffected by the diversions or acts of the parties hereto or any or either of them or by the release of stored water,

the natural flow to which the Twin Falls Projects are entitled to be measured to them at the Milner Dam.

I have reconsidered this provision and the resulting historical practice of crediting the Minidoka Project for reach gains between Lake Walcott and Milner. These issues are clearly of interest to the Burley and Minidoka Irrigation Districts, which rely on the Minidoka Project, and the North Side and Twin Falls Canal Companies, which divert senior priority water rights downstream at Milner Dam. While the Foster Decree was intended to resolve these issues, the intent and meaning of the provision quoted above and its appropriate application at the present time remain somewhat ambiguous.

I believe it would be useful for the Burley and Minidoka Irrigation Districts, the North Side and Twin Falls Canal Companies, as well as the Department of Water Resources to further explore these issues prior to the time that the Department develops its recommendations for the water rights associated with the Minidoka Project in the Snake River Basin Adjudication. Therefore, I request that the Burley and Minidoka Irrigation Districts as well as the North Side and Twin Falls Canal Companies provide the Department with any additional documentation that may be available regarding the intent and meaning of the applicable provisions in the Foster Decree. Although the Department will not begin preparing its recommendation until 2003, it may facilitate making appropriate adjustments to the water accounting procedures if the additional information could be provided by the end of this calendar year. Depending on the nature of the additional information provided, it may be beneficial to subsequently schedule one or more meetings between the Burley and Minidoka Irrigation Districts, the North Side and Twin Falls Canal Companies, and the Department of Water Resources.

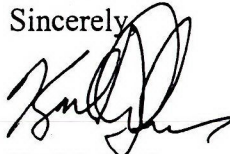
In the mean time, on an interim basis for all of the 2001 water year, the Department of Water Resources and Water District 1 will revert back to the procedure of crediting the reach gains between Lake Walcott and Milner to the Minidoka Project when the Burley and Minidoka Irrigation Districts are using stored water for irrigation. Unfortunately, it is not presently possible to identify reach gains resulting from use of water stored in Lake Walcott separately from reach gains resulting from use of water stored in American Falls, Palisades, and Jackson Lake. However, since the Snake River between Lake Walcott and Milner is generally a gaining reach, when losses rather than gains are calculated for this reach during the time period that the Burley and Minidoka Irrigation Districts are using stored water for irrigation, those losses will be subtracted from the accumulated credits for gains rather than from the natural flow that the North Side and Twin Falls Canal Companies are entitled to divert. This is one way to "average" credited reach gains and is a departure from past procedures.

Additionally, on an interim basis for all of the 2001 water year, the Department and Water District 1 will make a further modification to the procedures for allocating evaporation losses from reservoirs. Rather than including evaporation losses from Lake Walcott in the total evaporation losses that are proportionately allocated among all allottees receiving water from storage, evaporation losses from Lake Walcott will be determined separately and charged entirely to the Burley and Minidoka Irrigation Districts. I believe this procedure for allocating

evaporation losses from Lake Walcott will be more consistent with the provision in the Foster Decree that: “. . . the amount of the natural flow to be determined as such natural flow would be, if unaffected by the diversions or acts of the parties hereto or any or either of them or by the release of stored water, the natural flow to which the Twin Falls Projects are entitled to be measured to them at the Milner Dam.”

To provide reasonable advance notice and to provide opportunity to contest these changes, we will delay implementing the interim water accounting procedures described above for 15 days from the date of this letter. After 15 days, the accounting procedures will be implemented unless a written petition is filed contesting the interim accounting procedures.

Sincerely,



Karl J. Dreher  
Director

c: North Side and Twin Falls Canal Companies  
c/o John A. Rosholt via Facsimile to (208) 736-0041 and First Class Mail

Ron Carlson – Water District 1  
Bob Sutter – IDWR