



State of Idaho
DEPARTMENT OF WATER RESOURCES

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July 5, 1994

George Dovel
Route 1, Box 61
Horseshoe Bend, ID 83629

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

RE: Porter Creek Water Distribution

Dear Mr. Dovel:

This letter is sent in response to your "Request for Delivery of Water" dated June 22, 1994, your "Porter Creek Water Distribution" letter dated June 23, 1994, and your "Request for Delivery of Water" dated June 30, 1994. I will respond to the letters sequentially.

Request for Delivery of Water, dated June 22, 1994

In this letter you identified the status of water delivery from Porter Creek as of 4:00 pm on June 22, 1994. It is my understanding that the 1994 water delivery season was initiated on Porter Creek on Tuesday, June 21, with the Watermaster, Hank Berntsen, making the first delivery curtailments, so your letter is dated the day after delivery began. At the time your letter was written your diversion, representing priorities nos. 6,7 and 11, was locked closed. Water was being delivered to priorities nos. 1, 2, 4, and 5 on that day. You were concerned because (1) the measuring device for the no. 4 priority diversion was inoperable, and (2) water being wasted past the lower diversion dam (for priority no. 5) should have been made available to your no. 6 priority right at your upper diversion.

In response to your letter, Mr. Lester of this office contacted the Watermaster, Mr. Berntsen on June 24. As a follow-up, Mr. Lester visited the site with Mr. Berntsen on June 28. During this time the measuring device for diversion no. 4 was determined to be inoperable so the diversion headgate was ultimately locked closed pending repair of the measuring device. The flow in the creek declined from more than 165 miner's inches (m.i.) on June 22 to about 115 m.i. on June 28. During this period the Watermaster continued to attempt to satisfy on a priority basis the demands of the various senior water users.

Porter Creek Water Distribution, dated June 23, 1994

Your letter provided a summary of water delivery concerns from 1989 to the present. Due to the existence of extensive correspondence in our files relative to the years 1989-1993, I will not address your concerns for those years other than to say that the Department

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has a different point of view on many of the issues that you have raised. I do object to the personal attacks directed at Mr. Lester, who has no reason to have a personal agenda relative to water use on Porter Creek and who maintains a solid reputation in all of his many other assignments for the Department.

Relative to measurement of Jackass Creek waste flows, we continue our commitment to install a recording device as soon as the weir blade is installed. It is my understanding that you have installed the blade twice and it was immediately vandalized, and that you are planning to more permanently mount the blade on the concrete bulkhead and then contact us to install the recorder.

Your concerns relative to delivery during 1994 were addressed during field visits by Mr. Lester on June 28 and by myself on July 1, 1994.

Request for Delivery of Water, dated June 30, 1994

In this letter you identified the status of water delivery from Porter Creek as of 7:00 am on June 30, 1994. In response to the receipt of your faxed letter on the afternoon of June 30, I called both you and Mr. Berntsen to arrange for an on-site meeting the next morning. Mr. Lester had planned to be out of the office, so I represented the Department in his absence on this occasion. Accordingly, on the morning of July 1 the three of us visited all of the Porter Creek diversion sites and this is what we found:

1. The Dovel headgate, for priorities nos. 6, 7 and 11 was locked closed.

2. The Double Diamond headgate, for priorities nos. 4 and 15 was locked open. The measuring device was operable and showed a flow of 35 m.i. (0.70 cfs). We proceeded to the place of use and counted 72 sprinklers, all being used on the proper place of use for the no. 4 priority. At 4 to 5 gpm per sprinkler, the measured flow appeared to be consistent with the amount being sprinkled.

3. The Dobson/Oliver no. 2 priority headgate was locked open, and the flow over the weir measured 63.5 m.i. (1.27 cfs).

4. The Double Diamond no. 1 priority headgate was locked closed, with little leakage.

5. The amount of water leaking past the no. 2 priority diversion dam consisted of about 4 m.i. which was being diverted into the Woods no. 5 priority ditch, plus about the same amount leaking downstream past the Woods diversion.

6. The no. 3 priority water right was not being diverted.

Thus, the total flow in the creek was about 2.13 cfs. Mr. Berntsen stated that he had been advised that morning that the no. 2 priority users had completed their use of the water, and he was planning to direct the water to either the no. 1 holder (if Double Diamond desired the water) or to subsequent priorities later that day.

You demonstrated a method by which a diversion point can be sealed with a plastic tarp to ensure the diversion of all flows at a location in the stream. Based on your demonstration, it appears to be reasonable to require the no. 1 and no. 2 priority diversion dams to divert all but 5 m.i., and to require the no. 5 diversion to divert all remaining flows. In this way, you as a junior water right holder can be assured that downstream diversions of senior water rights are efficient. Accordingly, I directed the Watermaster to ensure that this standard is met unless the senior water right holders can demonstrate that the standard is impractical. The penalty for allowing excessive flows to bypass a diversion is that the Watermaster will curtail the delivery of flow to the diversion until better sealing can be accomplished. Flows curtailed in this manner will be offered sequentially to the next junior priorities.

It is my understanding that you, the Watermaster and I were all in agreement as to how this matter would be handled in the future. As a follow-up, this afternoon I called the Watermaster and he advised me that presently the no. 1 and 2 priority water rights are not calling water so your no. 6, 7 and 11 priority rights are being satisfied.

Thank you for working first through the Watermaster, and then addressing remaining concerns through this office. We expect Water District 65-B to properly deliver water in accordance with water law in the State of Idaho, and I feel that this goal is achievable through persistent and timely review of concerns by the water district members, the Watermaster, and IDWR personnel.

Sincerely,



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

cc: Watermaster, Hank Berntsen
Attorney Richard Eismann
IDWR (Steve Lester, Norm Young, Keith Higginson)