



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 25, 1999

Delmo Smith
2629 Kelley Topponce Rd
Bancroft, ID 83217

Re: King Creek Diversion

Dear Mr. Smith,

A tour of Portneuf River diversions was conducted with local water users on October 8, 1998. This tour was requested by McCammon Ditch Co. and the water district advisory committee. The tour included a visit of your diversion from King Creek.

The records of the Department and/or the Water District 29 watermaster indicate that you are the current owner or claimant of water rights diverting water from King Creek with a point of diversion located in T7S, R38E, Section 15, SESWSW. These water rights are identified by the Department as 29-00126 and 29-07028. The respective priority dates of these rights are 1902 and 1969.

Your King Creek diversion was visited during the tour because there have been a number of complaints over the past few years about delivery of your junior priority water rights during times when more senior rights are cut or not delivered. The district 29 watermaster, Arlin Olson, has always maintained that cutting your water rights during times of regulation would result in a futile call. In other words, water not delivered at your headgate would not reach the Portneuf River and thus could not be used toward delivering or satisfying any downstream water rights. Although I suspect Mr. Olson's assessment about the futile call may be correct, he could not confirm during our visit that the futile call of these rights has ever been put to a formal test.

The purpose of this letter is to advise you that the Department will instruct the watermaster in 1999 to regulate your King Creek diversion and rights according to priority and test whether the undelivered water can reach the river and help satisfy downstream demand. If this action does indeed prove to be futile, then the watermaster and Department can consider re-delivering your junior priority rights. If the action proves not to be futile during any time, then no water will be delivered to your diversion unless 1902 rights can be delivered. In either case, you should be prepared to face at least a short period of interrupted water supply this irrigation season. If the call is not futile, then the period may obviously be longer.

The Department and watermaster ask for your cooperation in this matter. This

cooperation is critical to answering continuous and long-running complaints regarding your diversion. If the futile call is not tested, then the complaints can not be properly addressed and/or resolved. Additionally, the Department would welcome any ideas or suggestions that you may have that would help resolve this issue.

If you have questions regarding this subject, please contact me directly at (208)327-7864.

Sincerely,



Tim Luke
Water Distribution Section

cc: Arlin Olson, Watermaster
Harold Jones, Eastern Region
Howard Hall, McCammon Ditch Co.

Enc.
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