



State of Idaho  
DEPARTMENT OF WATER RESOURCES

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May 31, 1994

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

JAMES W KISER  
5405 OVERLAND ROAD  
BOISE ID 83705

RE: Nahas Deliveries

Dear Mr. Kiser:

I am responding to your May 18 correspondence to assure you that my efforts to refine water distribution on Sinker Creek are ongoing and have continued into the 1994 irrigation season. This year, emphasis has been concentrated, in part, on the satisfaction of a 1969 minimum delivery agreement between H. E. Nettleton, acting for Joyce Livestock, and Lester Mitchell and Raymond Lenz, then owners of the Nahas Ranch. This agreement provides for the delivery of the 180 miner's inches, or 3.6 cfs, to Nahas Ranch under certain conditions. A copy of the agreement is enclosed for your reference. Mr. Nettleton has expressed and demonstrated a willingness to cooperate in delivery efforts under the agreement, however, the erratic timing of the deliveries and resultant fluctuations in flow at the Nahas weir have frustrated all parties. Additionally, IDWR's interpretation and the Water District's implementation of the agreement may not be clear. Following is a discussion of certain terms of the agreement and the steps I have taken thus far to see that it is consistently honored.

The first full paragraph on page 3 of the agreement contains the essence of the delivery requirements. Only during those times when direct Sinker Creek flows under Nettleton/Joyce Livestock rights are being diverted for use outside of the Sinker Creek drainage is Mr. Nettleton obligated to provide the minimum flows at the Nahas weir. The agreement does not apply to ground water which Mr. Nettleton may pump into Murphy Mutual Canal (MMC), or to stored flows which Mr. Hulet is conveying in MMC.

According to the agreement, only those Sinker Creek waters which flow in MMC past the NE $\frac{1}{4}$  of Section 25, T03S R02W, are considered to be delivered outside the Sinker Creek drainage. There is a Nettleton headgate and field located in NW $\frac{1}{4}$  Section 1, T04S R02W, which may receive water from MMC upstream from the point in Section 25. This site is referred to as the bench field and is considered to be within the Sinker Creek drainage because return irrigation flows from the field will enter Sinker Creek. As long as all flows delivered into MMC are turned onto the bench field, the requirements of the agreement are not applicable. If Nettleton Sinker Creek water is flowing past the bench field, then the requirements of the agreement are invoked. See attached map for location of these sites.

In order to monitor deliveries under the agreement, the Watermaster has already been instructed to use a series of steps to assess Mr. Nettleton's use of Sinker Creek water in MMC and to correct for discrepancies at the Nahas Ranch, if necessary. There is a portable measuring device available in the bench field lateral ditch which the Watermaster is using to determine whether Sinker Creek flows are traveling past the bench field. If Nettleton Sinker Creek flows measured at the head of MMC do not exceed measured flows delivered into the bench field, all flows are remaining in the drainage, and the watermaster is then only concerned with normal priority delivery. If Nettleton Sinker Creek flows are being delivered further down MMC, a check is made of the Nahas inflow. If the requisite 180 inches are not being received, MMC deliveries are limited to the bench field or flows are removed from MMC entirely, thus removing the minimum flow requirement.

When the agreement is not in effect, the Watermaster delivers based on priority order only. During normal priority distribution periods, Nahas Ranch holds the fourth-ranked direct flow right of 2.46 cfs and the 7th-ranked right of 1.8 cfs for a total allocation of 4.26 cfs or 213 inches when all rights are being satisfied. Under priority delivery, it is not unreasonable to expect that flows at Nahas Ranch will routinely fall below 180 miner's inches as natural flows in Sinker Creek begin to diminish. Your letter did not identify the day or days when Nahas Ranch was not receiving flows of 180 miner's inches, or 3.6 cfs. It could be possible that on some of those days, priority delivery was in effect rather than the minimum delivery requirement.

Irrigation practices on the Joyce Ranch will have a significant impact on the available return flows in Sinker Creek. The manner in which Mr. Nettleton's water rights are structured allows him the flexibility to irrigate with either ground water or Sinker Creek water on virtually all lands under his control. However, the pumpage of the older Nettleton wells is not within the jurisdiction of Water District 57D. The delivery agreement does not specify the source of water used to satisfy the agreement. At times when Sinker Creek flows are in MMC, Mr. Nettleton may elect to use these wells to irrigate along Sinker Creek and thus provide return flows to Nahas, but the Water District cannot require him to irrigate in such a manner. Idaho water law specifically prohibits the wasting of water to provide return flows to fulfill another right, so any ground water appropriated for the ultimate purpose of satisfying the agreement must be appropriated under a valid right and be placed to a beneficial use in order to provide return flows in this manner.

I am aware of at least two occasions this season when Mr. Nettleton attempted to take delivery of Sinker Creek water in MMC past Section 25, or outside of the Sinker Creek drainage. On one of those occasions, groundwater irrigation was occurring adjacent to Sinker Creek to generate what was hoped to be sufficient return flows. On both occasions, the Watermaster had to restrict deliveries back to the Sinker Creek drainage because efforts by Nettleton to increase flows at Nahas Ranch to the full 3.6 cfs were unsuccessful. Unfortunately, adjustments were not made until well after flows began dropping at Nahas Ranch. This describes, in a nutshell, the timing problem which must be corrected.

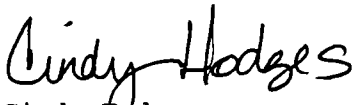
In the past, parties on Sinker Creek have used a rule of thumb that approximately 5 cfs, or 250 inches, exiting the Nettleton property will provide the requisite 3.6 cfs, or 180 inches, at the Nahas weir. There is no hard data to support this assumption, and these deliveries have never before been regulated by the Watermaster prior to Ms. Blackstock's appointment. It is obvious that a 5 cfs exit flow is not always sufficient to provide the minimum delivery, especially during periods when no return flows are coming into the creek from the Tyson Ranch.

The Watermaster and Mr. Nettleton will therefore be instructed, by copy of this letter, that uses of Sinker Creek water by Mr. Nettleton outside the Sinker Creek drainage may not be initiated unless Nahas Ranch is already receiving at least 3.6 cfs under normal priority deliveries, and that amount can reasonably be expected to be maintained without significant fluctuations.

Unfortunately, due to flow lag times and variable factors such as evaporation and channel losses, there is no cookbook formula which will relate exit flows from the Nettleton ranch to incoming flows at the Nahas weir. The challenge facing Mary and Paul will be to experiment with and to learn which distribution practices work and which do not, with respect to delivery of the minimum Nahas flows. With added data from Watermaster reports and with ongoing adjustments to distribution practices, I feel that the delivery of the minimum flows to Nahas during applicable periods will continue to become more consistent.

In the interim, I appreciate the patience that you and the Bakers have demonstrated while we have been working on this issue. Equitable water delivery on Sinker Creek remains a challenge. Please keep us informed of your concerns, and feel free to call with any questions.

Sincerely,



Cindy Hodges  
Sr. Water Resource Agent

Enclosures

cc: (w/ enclosures)	Craig Baker
	RT Nahas
(w/o enclosures)	Mary Blackstock
	Paul Nettleton
	Water District 57D file