



NUBIANS

CARL and BARBARA AUSTIN & FAMILY
P.O. Box 93 Oakley Idaho 83346

26 September 94

To: Tim Luke
Water Allocations

RECEIVED

SEP 27 1994

Department of Water Resources

From: Carl F. Austin

Subject: Questions regarding proposed meeting of 11 October.

1. It has once again been proposed to establish a water master for Goose Creek. Unless certain problems can be clearly addressed, having a water-master would appear to be a pointless exercise.

2. Background Situation

A. Only 37% approximately, of the Goose Creek stream valley is in Idaho. To control Idaho only would be pointless & it would seem a logical pre-requisite is to have Idaho, Utah and Nevada agree to a single person as water-master, with authority

in each state, ie wearing "3 hats". In other words the 3 state water agencies should present a unified protocol worked out in advance of any meeting, as a proposal for the users to consider and the meeting should consist of all users from all three states, not just the Idaho users.

B. Divisions from Goose Creek consist of

- 1) Dams diverting water into ditches for the purpose of flood irrigating meadows and feeding one or two small wheel line systems.
- 2) Pumps diverting water into ditches for the purpose of irrigating meadows
- 3) Dams for the purpose of sub irrigating meadows without a surface diversion, including so-called crossings & check dams. Two of these are shown in Figures 1 & 2 and at last count there were 14 such dams on the creek.

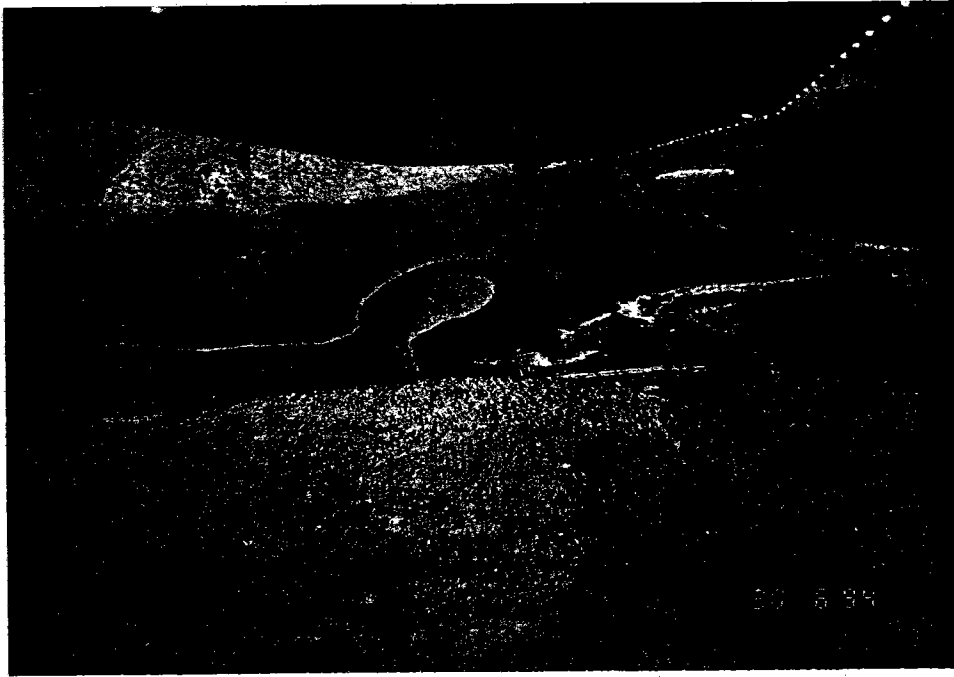


Fig 1 Dam providing extensive sub-irrigation with no surface diversion



Fig 2. "Agricultural Crossing" providing extensive sub-irrigation with no surface diversion

C. What is the DWR position regarding dams such as those in Figures 1 and 2?

In the case of Figure 1, it is obvious hundreds of acres are being "irrigated" with no surface diversion. If this is legal, and does not violate the Whittle Decree, then every upstream rancher should follow this practice (as many do now) and a water master is truly pointless. The scenario is

quite simple:

- (1) build a diversion dam to feed a ditch
- (2) on 20 July or when a call is made drop the water to just below the ditch.
- (3) subirrigate with no surface diversion for the rest of the season,

D. The Whittle Decree states:

"... and no dam or other obstruction of the natural flow of the stream shall be maintained so as to divert water from the channel of the stream, except through ditches, canals or other works provided with such headgates, control works and measuring devices, and each of the parties hereto shall be perpetually enjoined from diverting from the channel of the stream or its tributaries, any water through any

ditch, conduit or other device not provided with such headgates, control works and measuring devices."

It would thus seem absolutely paramount that prior to any meaningful meeting DWR determine whether or not sub-irrigation from behind an inactive diversion dam does in fact constitute a diversion.

As a corollary, if in fact such an installation, as those shown in Figures 1 and 2 is diverting, is there not then a requirement under the Whittle Decree to install a weir or other device at the upstream end of the pond and at the downstream side of the dam so as to measure what is diverted to the meadow? Or - is the dam to be considered part of the ditch system, requiring the entire dam be removed to the stream bed elevation at the cessation of irrigation via ditch? And - what if there is no ditch in the first place?

- E. A policy expression is further needed regarding what the water master, if one is appointed, is to do with beaver dams and with plugged culverts in crossings, as these clearly subirrigate adjacent meadows too, but recognizing the need for erosion control also exists.
- F. In Summary, for the 11 October meeting to be a success we need a written opinion from DWR regarding (1) the 3 state protocol, (2) the using of dams to subirrigate meadows, and (3) the control or removal of beaver dams & culvert blockage combined with responsibility for negotiating erosion control efforts.

Respectfully



208-436-1562