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DEPARTMENT OF
WATER RESOURCES

22914 N Shorthorn Ct.
Sun City West, AZ 85375
January 15, 2006

Tim Luke
Water Distribution Section
322 East Front Street
P.O.Box 83720
Boise, ID 83720-0098

RE: Letter to Bob Duke dated September 1, 2005
Antelope Creek Regulation and Futile Call Determination

Dear Mr. Luke:

In your letter to Bob Duke, you addressed the three conditions that may result in a futile call determination on Antelope Creek. It appears the conditions depend on connectivity to the Big Lost River and a useable quantity of water at the place of use. The guidance does not address time and quantity of water for connectivity as included in the procedure for connectivity above the Mackay Dam.

Our concern is that without time and quantity in determining Antelope Creek connectivity to the Big Lost River, there may be extended delays in futile calls. This could be very destructive to the upper Antelope Creek Valley as there are no wells or storage to supplement the use of surface water as there are in the Big Lost River. It has been well established that ground water pumping has a significant impact on the surface water delivered to the Moore diversion. This was addressed by the Director of the Department of Water Resources in an Order in response for a delivery call by Jensens in June 28, 2004, where it was stated "historic diversions data from 1959 to 1971 and from 1975 to 1983 indicate that prior to and during the development of ground water rights, water was delivered to the Moore diversion throughout the entire irrigation season, Including the months of August, September, and October, even during the low water years of 1959, 1960, 1961, 1977 and 1979."

Applying this historical data to current conditions it is clear that in the absence of ground water diversions there would be sufficient water at the Moore diversion to satisfy Jensens' and other senior surface water rights. Delivery calls would not be necessary and Antelope Creek water rights would not be cut off during periods when Antelope Creek is administered in priority with the Big Lost River.

Regardless of whether ground water diversions directly affect the supply of surface water on Antelope Creek or through delivery calls at the Moore diversion, the 100% loss of surface water diversions is destructive to the economic and environmental quality of the Antelope Valley. Many water users in District 34 have surface and ground water rights that allow recourse for senior water right holders against junior surface and ground water rights. Junior ground water right holders are allowed to pump out of priority

through mitigation. It is unclear if Antelope Creek senior water right holders have any recourse when their surface water diversions are cut 100% by surface water delivery calls while junior water right holders are allowed to pump out of priority pursuant to the District 34 mitigation plan.

The reason for not including time and quantity for connectivity of Antelope Creek to the Big Lost River was made clear in a letter to the Upper Antelope Creek Water Users on September 8, 2005 from Mr. Spackman where he stated, "There are no general provisions decreed in the Snake River Basin Adjudication or any former decrees that specify time periods, flows, or other conditions relative to delivery of water on Antelope Creek, or connectivity between Antelope Creek and the Big Lost River." If it is required that general provisions must be decreed in the Snake River Basin Adjudication Court to change water District 34 guidelines for operation, or if there is the possibility that additional general provisions will be decreed in the Snake River Basin Adjudication Court, we would like the opportunity to have input on how these provisions may affect Antelope Creek water users.

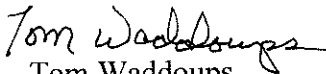
We do appreciate addressing current meter flows on Antelope Creek to establish channel losses. This would be a positive step and to our knowledge is the first time conveyance losses would be measured on the porous reaches of Antelope Creek. Once the channel losses are determined is there a quantitized amount that would be considered excessive conveyance loss that would demonstrate a call for water is futile? Is there a high probability that a usable amount of water at the place of use or zero water at the Big Lost River confluence will determine the conditions for a futile call?

Reviewing the literature indicates there were meetings and good cooperation in developing the conditions for Big Lost River connectivity above the Mackay Dam and other issues in District 34, but for some reason Antelope Creek water users were left out of the process.

We trust that you see our concerns about time and quantity for Antelope Creek connectivity to the Big Lost River when Antelope Creek is administered in priority with the Big Lost River. This may be the only recourse we have to provide some relief from the affects of ground water diversions on the supply of water for satisfying surface water delivery calls.

Thank you for all the help and allowing us to have input as the transformation of water usage occurs in District 34. Your comments and input for our concerns would be very much appreciated.

Sincerely,


Tom Waddoups

Cc: Upper Antelope Creek Water Users



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 1, 2005

BOB DUKE
WATERMASTER, WATER DISTRICT NO. 34
PO BOX 53
MACKAY, ID 83251-0053

Re: Antelope Creek Regulation and Futile Call Determination

Bob,

I drafted this letter at the beginning of the irrigation season with the objective of providing you and the water district some guidance regarding regulation and determination of futile delivery calls on Antelope Creek for this and subsequent irrigation seasons. I did not complete the letter because the flooding conditions on Antelope Creek later in May made these instructions for futile call and regulation unnecessary at the time. I apologize for the delay in getting this to you. I hope this letter provides future guidance on this subject. The guidance herein is based in part on the experience gained early this year. I propose adding this letter to the *Water District 34 Guidelines for Operation* unless you have particular concerns or disagreements with this guidance.

Beginning May 1 of each year, the watermaster should begin keeping records of deliveries in the Antelope drainage. All diversions should have measuring devices and headgates in place after June 1, 2005, in accordance with the order issued by IDWR on November 16, 2004. In the event that measuring devices or headgates are not functioning or are washed out due to spring flooding, measuring and regulation should be done to the greatest extent practical using acceptable alternate methods until devices can be repaired or reinstalled. The watermaster should current meter diversions periodically until measuring devices are in place. The watermaster may refuse delivery of water if the user is not working diligently towards repair or replacement of any measuring device.

Regulation during Rising Flow, Three Conditions that Potentially Require a Futile Call Determination

Antelope Creek and its tributaries are tributary to the Big Lost River and are to be administered in priority with the Big Lost River unless a futile call determination is made. There are three conditions assumed to occur at the start of the irrigation season and/or during the period when Antelope Creek flows are increasing because of runoff from spring snowmelt. The three conditions listed below are situations under which a futile call determination may be appropriate.

1. Antelope Creek is not connected to the Big Lost River at the confluence, and the Big Lost River is not connected to the Moore diversion.
2. Antelope Creek is not connected to the Big Lost River and the Big Lost River is connected to the Moore Diversion.

3. Antelope Creek is connected to the Big Lost River, and the Big Lost River is not connected to the Moore Diversion.

Procedures for regulation and the process for initiating a futile call determination for each of the three conditions follow

1. The Big Lost River is not Connected to the Moore Diversion and Antelope Creek is not Connected to the River.

At the start of the irrigation season on May 1, Antelope Creek normally is not connected to the Big Lost River and the Big Lost River is not connected to the Moore Diversion. When this condition exists, the delivery of water in the Antelope drainage is made to those Antelope drainage and Big Lost River water users calling for water. If there is insufficient water for filling a delivery call on Antelope Creek, the more junior water rights are curtailed to fill the more senior rights.

If a lower Big Lost River water right holder makes a water delivery call, the watermaster must attempt to deliver that water for beneficial use. The delivery attempt consists of shutting off Big Lost River and tributary diversions for water rights with priorities junior to the priority of the water right owned by the Big Lost River right holder making the call, including Antelope Creek water rights. If shutting off the junior water rights (curtailment) provides a sufficient amount of water to supply the Big Lost user's call, the call is not futile.

If junior water rights are curtailed, and a useable quantity of water is not available to the Big Lost River user making a delivery call, the call may be futile. In order to obtain a futile call determination from IDWR, the watermaster should follow the procedures in Rule 20.04 of the Water District 34 Water Distribution Rules and the Section 7.6 of the IDWR Water District 34 Guidelines for Operation. Specific reference is made to Antelope Creek and other tributary streams in Section 7.6 of the Water District 34 Guidelines. Sufficient documentation of flows, deliveries, and the corresponding priority date of water right deliveries on Antelope Creek need to be compiled and submitted to make a futile call determination. Delivery records must include deliveries made before and after the curtailment action in response to the call by the Big Lost River water user(s). Because no gauging stations exist on Antelope Creek, assistance may be needed from IDWR to make current meter measurements of flows on the creek. IDWR will work toward adding the Antelope diversions to the Internet data entry application so they can be entered along with the river diversions next irrigation season.

2. The River is Connected to the Moore Diversion and Antelope Creek is not Connected to the River

If during the early part of the irrigation season the Big Lost River is connected to the Moore Diversion but Antelope Creek is not connected to the river, water rights in the Antelope drainage may also be regulated as a separate stream from the Big Lost River unless, or until a user on the Big Lost River makes a delivery call. If a delivery call is made, water rights on the Big Lost River and tributaries, including the Antelope drainage, are cut back so only those with a priority the same as or senior to the priority date in effect on the Big Lost River are on. If regulation of junior rights on the Big Lost and tributaries releases water in sufficient quantity to meet the lower Big Lost users call, the call is not futile.

If the senior Big Lost River right holder who is making a delivery call is not receiving a useable amount of water, the same process as described for condition 1 above is used in order for IDWR to make a futile call determination.

3. The River is Not Connected to the Moore Diversion and Antelope Creek is Connected to the River.

Regulation and procedures for an IDWR futile call determination are the same as for condition 1, above.

Futile Call Determination Request during Receding Flow Conditions After Antelope Creek Has Connected to the Big Lost River

Once Antelope Creek is connected to the Big Lost River and natural flow water rights are being delivered to diversions and right holders on the lower Big Lost River, the watermaster should be regulating water rights in the Antelope drainage in priority with water rights on the Big Lost River unless a futile call determination is made. If water is not reaching the Big Lost River from the main or South Antelope Creek channels, a request for a futile call determination may be warranted. A futile call determination in this case should be done in the same manner or procedure described in condition 1 above, and in accordance with Rule 20.04 of the Water District 34 Water Distribution Rules, and Section 7.6 of the Water District 34 Guidelines for Operation.

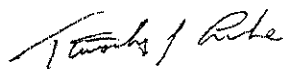
When addressing a futile call request, it may be necessary to current meter flows in the main and South Antelope channels at the river confluence, and then farther upstream and below the last diversion point. These metered flows may be used to establish the losses in the channels, and demonstrate that the call by the Big Lost River user(s) is futile. IDWR staff may be available to assist with current metering, if requested.

Water Distribution Rules for District 34

Guidance in this letter is intended to address issues that are not covered explicitly in the Water District 34 Water Distribution Rules for requesting futile call determinations by IDWR. In addition to this guidance letter, Rule 20.04 - *Futile Call For The Delivery of Surface Water* lists other criteria, the most important of which is: the director (of IDWR) may consult the Water District 34 advisory board, the Big Lost River Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

Please call if you have questions.

Sincerely,



Tim Luke
Water Distribution Section

cc: IDWR Easter Region – Idaho Falls
Steve Burrell, IDWR
Big Lost River Irrigation District – Mackay
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