

Memorandum

To: Tim Luke – Water Distribution Section Manager, WD34 File
From: Nick Miller
Date: June 29, 2006
Re: “Free Water” and recharge references in Kent Foster’s 6/13/06 letter

You had asked me to prepare a short memorandum regarding the reference to “Free Water” and difficulties with recharge in the June 13, 2006 letter from Kent Foster. The paragraph in Mr. Foster’s letter reads as follows:

“You are personally aware of the most recent difficulties experienced by the recharge committee for this basin in attempting to persuade the watermaster to deliver available water supplies for such recharge. Instead, he and the manager of the Big Lost River Irrigation District seemed to insist on characterizing the extra water supplies as “free water” that they can deliver to the water users to whom they are personally loyal, without any accounting. We insist this practice be stopped and corrected.”

I believe the recharge and free water issues and my awareness of them refer to a call I received from Mitchell Sorensen on Friday, May 12, 2006. Mr. Sorensen called me and was very upset. He described the concept of “free water” to me as that water that is available above and beyond that required to satisfy existing water rights. He indicated that Bob Duke does not deliver this “free water” to everyone, but instead only delivers it to his friends. Furthermore, Mr. Sorensen suggested that the practice of delivering “free water” at that time was not appropriate because it was being done when other rights were not being filled (his 1983 right out of the Blaine canal (34-7430) and the recharge permits (34-7571 and 34-7573)). Additionally, Mr. Sorensen alleged that Bob Duke was delivering the BLRID Antelope Creek storage exchange right (34-13) out of priority. He seemed most concerned that the delivery of “free water” is preventing the delivery of the recharge water and his 1983 right.

At that time the flow at the Arco gage was about 80 cfs, and recharge was occurring so there was plenty of water to satisfy all valid water rights. I explained that his 1983 right is a floodwater right with a stringent condition that he may only divert water that is sent down the Blaine Canal for the purpose of flood control, as described in condition 1 on his permit (I have attached a proof report of this permit for reference). I explained to him that he is not allowed to divert water under his 1983 right, but he may use the water if the conditions on the permit are met. Although there was water in the Blaine Canal, the conditions of the permit were not satisfied. After some discussion, it became apparent to me that Mr. Sorensen was upset because Bob Duke had not sent more recharge water down the UC/Blaine canal below Antelope Creek. I confirmed with Mr. Sorensen during a phone call on June 22, 2006 that the Blaine canal was the only canal that the watermaster did not send recharge down to the satisfaction of the recharge committee.

I began to suspect, after discussions with Bob Duke and Mr. Sorensen, that Mr. Sorensen’s primary interest in requesting additional recharge down the Blaine canal was to provide additional water to irrigate his property. Mr. Sorensen confirmed on June 22, 2006 that he had irrigated with whatever recharge water made it down to his property. After some discussion with

Mr. Sorensen and Mr. Duke, we agreed that additional recharge water would be sent down the Blaine Canal, but that Mr. Duke will verify that the recharge water that makes it past the cross-over canal is rediverted and allowed to recharge in the gravel pit located at 04N 26E S 30 rather than going to irrigation. I felt this was important because Mr. Sorensen does not have a water right to irrigate with the recharge water. Mr. Sorensen alleges that users on the BLRID canals are also irrigating with recharge water and he insists that we either control that practice or allow him to irrigate his lands with recharge water.

With respect to "free water", it appears that the distribution rules for Water District 34 (IDAPA 37.03.12.040.06) recognize and authorize the Director of IDWR to allow diversion of water in excess of that authorized by a water right under certain conditions. However, it appears that the watermaster has not petitioned for authorization to deliver any such water. The watermaster indicated to me that the only delivery of "free water" he is aware of is that, during times of high water, users are delivered their full water right at the field headgate, rather than at the canal heading (it is delivered "shrink-free") but they do not get more than what their water right authorizes.

I indicated that Mr. Sorensen, or the Watermaster, may petition the director to allow the watermaster to deliver water under rule 40.06 and make both Mr. Sorensen's diversion down the Blaine Canal, and users on BLRID canals diversions legal.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 34-7430

WATER RIGHT NUMBER: 34-7430

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MARSHAL TODD PERKES RT 1 BOX 69 MOORE, ID 83255 (208)527-3157
Current Owner	GREG DANIELS RT 1 BOX 63 MOORE, ID 83255
Current Owner	EVERETT T ACOR JR 3196 N YELLOWSTONE HWY IDAHO FALLS, ID 83401 (208)524-5138
Current Owner	MITCHELL D SORENSEN 3871 W 2500 N MOORE, ID 83255 (208)527-3271
Current Owner	NORMAN NIEDERER RT 1 BOX 63 MOORE, ID 83255
Security Interest	IDAHO AG CREDIT FLCA PO BOX 386 REXBURG, ID 83440-0386 (800) 632-8221

Priority Date: 04/08/1983

Basis:

Status: Active

<u>Source</u>	<u>Tributary</u>
ANTELOPE CREEK	BIG LOST RIVER
BIG LOST RIVER	SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	199.600 CFS	
	<u>Total Diversion:</u>	199.600 CFS	

Location of Point(s) of Diversion

ANTELOPE CREEK CUSTER County	NE1/4NW1/4	Sec. 36, Twp 06N, Rge 25E, B.M.
BIG LOST RIVER CUSTER County	NW1/4SE1/4	Sec. 14, Twp 06N, Rge 25E, B.M.
ANTELOPE CREEK CUSTER County	NE1/4NW1/4	Sec. 6, Twp 06N, Rge 26E, B.M.

Place of Use

IRRIGATION

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 34-7430

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	25E	1	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	520.0
03N	25E	2	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0					40.0	40.0	40.0	40.0	480.0
03N	25E	3	40.0	40.0															80.0
03N	25E	11	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0					40.0	40.0	40.0	40.0	480.0
03N	25E	12	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	640.0
03N	26E	17	15.0	30.0			40.0	40.0	20.0	5.0									150.0
03N	26E	18	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	640.0
04N	25E	25		40.0	40.0		40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	560.0
04N	25E	34													40.0	40.0	40.0	40.0	160.0
04N	25E	35	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	640.0
04N	25E	36	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	640.0

Total Acres: 4990

Conditions of Approval:

- Use of water is authorized only during flood events when county commissioners, highway district commissioners, or state emergency agency officials are diverting water into the Blaine Canal as they determine necessary to prevent or reduce damage to public or private property. The amount diverted at the field headgate from the Blaine Canal shall not exceed 0.02 cfs/acre when combined with all other rights appurtenant to the acreage upon which it is being used.
 The permit holder is not authorized to call for diversion of water under this permit or to take any action to divert water under the permit except as provided in the above condition.
 This permit has the sole and limited effect of allowing the permit holder to use, in accordance with the permit's priority date, water placed in the Blaine Canal during officially designated flood emergencies.
 Any any time within two years from the effective date of this permit, the permit holder may petition the director of the department to consider information allowing for a determination of the specific flow rates necessary to protect the public interest values in the Big Lost River and Antelope Creek, as recognized in this decision. Upon a determination by the director of the required flow rates, the approval conditions of this permit will be amended to allow the permit holder to request the diversion of water under this permit at times when the flow in Antelope Creek or Big Lost River exceeds that required to protect public values. The permit holder shall serve the parties to this proceeding with copies of the petition together with any supporting information for their review and and comment to the department. Upon request, the department will provide an opportunity for hearing on the petition.
 The permit holder's diversion rate from the Blaine Canal shall not exceed 99.8 cfs when combined with all other rights supplying water to the place of use authorized under this permit.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 34-7430

2. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. &DISTRICT.
3. 004 The issuance of this right does not grant any right-of-way or easement across the land of another.

Remarks:

Comments:

1. SCURTIS 6/3/1998 MISC. INFORMATION

Comment: The applicants have asked for processing of this application and Application Nos. 34-07247 and 34-07430 under a provision of the existing order placing a moratorium on approval of new consumptive uses in the ESRB including the Big Lost River Basin. In accordance with this provision, the applicants have offered to provide mitigation to protect prior surface and groundwater rights in accordance with IDWR water distribution rules, WD#34.

Water Supply Bank: