

FROM: ROBERT & DIANA NIELSON
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7/20/2004

RECEIVED
JUL 21 2004
DEPARTMENT OF
WATER RESOURCES

TO: STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
PO BOX 83720
BOISE, ID 83720-0098

CONCERNING: Petition for Reconsideration,

We feel IDWR has contemptuously pushed the mitigation process filed by Jay V. Jensen, Jack A. Jensen and L. Vaughn Jensen ("Jensen's").

We protest the Cease & Desist Order signed 7/12/2004 by Karl J Dreher for Big Lost River Water District 34 due to:

1. The study the order is based is on a small unique area of the Big Lost River Valley, extrapolated mathematical equations based on other small and outdated studies, and will not hold up geologically for our complicated valley. The study is subjective based on retrospective questionable data that can not bring accurate conclusions, or valley wide hydrologic projections and in itself questions its own viability.
2. The Jensen's are still getting their water and cannot prove any loss that other District 34 Water rights owners should be liable for. This order is premature and without merit.
3. Senior water rights are being held so these Junior rights can be delivered.
4. In 1883 when this water right was filed the Mackay Dam did not exist nor did storage water. Without the dam this would be a futile call.
5. Gov. D. Kempthorne has Butte and Custer Counties in a designated Drought Disaster Area that qualify for funding on lost crops. This drought is an act of nature and we can not be held liable. We meet the most serious definition of drought. Under this the Jensen's also are making a futile call.

6. This request by the Jensen's was a quick fix for a big problem. This neat, cheap remedy that IDWR is pushing may set precedence that could cause statewide water right disasters leaving Idaho's water up for grabs by other groups and financially break many who are already in a poor agricultural economical state.
7. Many water users have already mitigated voluntarily without recognition or acceptance by IDWR.
8. The theory of the ground water users causing the Jensen's 1883 water to be undeliverable is in direct conflict with their solution of pumping more water from the ground and at the expense of others. There mitigation call is self serving without regard for anyone else or the future water use of this valley.
9. The water gage above the reservoir malfunctioned and was misread for 9 days so 9 days of extra river water went to decreed water rights and has been delivered down valley. This error is in excess of any projection of water left to fulfill Jensen's mitigation demand. This water helped carry the water they have received.
10. The water users though Bob Duke Water Master, requested a meeting with IDWR to address this mitigation and it was set by IDWR for July 6th 2004, but IDWR cancelled then postponed it to August 2nd 2004 then proceeded to certify on 7/12/2004 then mail the Order in question not allowing any time for response. This document was not sent certified so IDWR doesn't know who received it or when.
11. Yes, we received a confusing letter back in May that made no sense. After talking to the Water Master, and Water Board Members we were led to believe a mitigation plan was already in place and that our new Water Master, Water Board and the Advisory Committee were consulting with IDWR to assure our legal water rights of mitigation were in place.

In conclusion the above reasons clearly state a few reasons the Order for the Big Lost River District 34 be reconsidered...

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert & Diana Nielson", followed by the date "7/21/04".

Robert & Diana Nielson