

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF DETERMINING A FUTILE)	
CALL FOR THE DELIVERY OF SURFACE)	ORDER
WATER IN WATER DISTRICT NO. 34,)	
<u>BIG LOST RIVER</u>)	

The Director of the Department of Water Resources ("Department"), being charged with the duty of protecting vested water rights, enforcing certain statutes of the State of Idaho, and the rules of the Department, has consulted with the watermaster for Water District No. 34 and the advisory committee for Water District No. 34 regarding the determination of a futile call and delivery of surface water on the Big Lost River.

Based on the Department's investigation and understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The watermaster of Water District No. 34 has contacted the Director and provided measurements or estimates of flow and diversions in various locations of Antelope Creek. IDWR staff visited various locations on Antelope Creek on May 16 and 17, 2007. The watermaster and IDWR staff provided the following pertinent data:
 - a) On May 15, 2007 the watermaster reported that water rights on Antelope Creek have been regulated to the same priority as rights being delivered on the Big Lost River since May 4, 2007. The priority date being delivered from May 4th through May 13th was May 31, 1884. From May 14th to May 17th, only water rights bearing a priority date of August 31, 1888 were being delivered.
 - b) On the evening of May 6th, water was diverted into the Hanrahan Ditch, a diversion from Antelope Creek. The watermaster reported that water in Antelope Creek flowing past the Hanrahan Ditch was not reaching the intersection of Antelope Creek and the 3-in-1 Ditch on May 7th. The watermaster further reported that on May 8th water in Antelope Creek was not reaching the Big Lost River. The watermaster also reported that water in Antelope Creek was not reaching Highway 93 on May 10th and 11th. The watermaster estimated that as much as 50 cfs was flowing in Antelope Creek below the Hanrahan Ditch as of May 11th and 12th and only about 3 cfs reaching the intersection of the creek and the 3-in-1 Ditch.

- c) The watermaster submitted a petition to the Director of IDWR on May 15th seeking approval to administratively disconnect Antelope Creek from the Big Lost River.
- d) On May 16, an IDWR staff member visited different locations on Antelope Creek in response to the petition for futile call. The staff member made the following measurements and observations:
- Hanrahan Ditch: 22 cfs
 - Antelope Creek North Channel below Hanrahan Ditch: 28.3 cfs
 - Antelope Creek South Channel just above Hanrahan Ditch (split from North Channel): 2 to 3 cfs (estimated)
 - Observed that flow of North Channel Antelope Creek splits below the Hanrahan Ditch with one channel on the south returning flow to the South Channel of Antelope Creek. The other channel was dry.
 - Flow of the South Channel Antelope Creek at UC/Blaine Canal: 6.8 cfs (no water being diverted or flowing down UC/Blaine Canal)
 - Flow of South Channel Antelope Creek at 3-in-1 Ditch: Estimated approximately the same flow as measured at UC/Blaine Canal, or about 6.8 cfs, and observed that some flow at this point was being diverted to a ditch immediately adjacent to the junction of Antelope and 3-in-1 channels, but that most of the water was being returned to the South Channel of Antelope Creek just below Highway 93. About 2.7 cfs of water was leaking through a headgate and down the 3-in-1 Ditch below the intersection of the ditch and Antelope Creek. The leakage includes water from Antelope Creek and any remaining flow in the 3-in-1 Ditch above the intersection of the creek and the ditch.
 - The remaining water in the South Channel of Antelope Creek was not reaching the river and the channel was dry between Highway 93 and the river.
 - There was only one irrigation diversion located anywhere along Antelope Creek below the Hanrahan Ditch. The diversion in question was for irrigation purposes and using water diverted from the Big Lost River via a lateral off of the 3-in-1 Ditch.
- e) IDWR staff visited these locations again on May 17th and observed essentially the same flows and conditions. IDWR staff confirmed no other diversions of water from the South Channel of Antelope Creek below the Hanrahan Ditch except for the one irrigation use off of the lateral from the 3-in-1 Ditch and using water from that ditch that had been diverted from the Big Lost River. IDWR staff also visited several diversions above the Hanrahan Ditch and confirmed that diversions and rights upstream were generally being held to the August 31, 1888 priority date as determined by the watermaster.
2. Based on the information supplied by the watermaster for Water District No. 34 and the IDWR staff member, the call for the delivery of surface water in the Big Lost River by senior right holders located below the confluence of Antelope Creek and the Big Lost River downstream to and including the Moore Diversion would be futile.

CONCLUSIONS OF LAW

1. Rule 20.04 (IDAPA 37.03.12.20.04) of the Rules Governing Water Distribution in Water District No. 34 (Distribution Rules), provides:

Rule 37.03.12.020.04. Futile Call for the Delivery of Surface Water

When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without unreasonable waste as determined by the Director, the watermaster will not curtail the junior water rights in a futile effort to deliver water to the senior rights. The Director 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.

2. Rule 30 (IDAPA 37.03.12.30.01 - .02) of the Distribution Rules, provides:

Rule 37.03.12.030. Natural Flows

Natural flow shall be delivered through the natural river channel to the point of diversion of record except as provided in these rules.

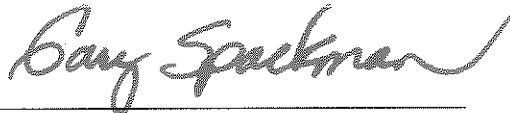
3. Rule 30.01 and 30.02 (IDAPA 37.03.12.30.01 - .02) of the Distribution Rules provide only two exceptions to Rule 30 above. The watermaster is allowed to deliver the natural flow of the river channel only through the Eastside Canal and the Munsey Ditch to downstream diversions under certain conditions.
4. Curtailment of junior surface water rights upstream of the confluence of Antelope Creek and the Big Lost River for delivery and use of senior rights at the Moore or Eastside Diversions constitutes a futile call by the senior water right holders at the Moore and Eastside Diversions except as provided the order below.

ORDER

IT IS THEREFORE HEREBY ORDERED as follows:

1. The watermaster for Water District No. 34 is hereby instructed to distribute surface flows of Antelope Creek during the 2007 irrigation season as a separate source, except as provided in No. 2 below.
2. The watermaster for Water District No. 34, with the approval of the Director, may discontinue the futile call determination anytime during the 2007 irrigation season if it is subsequently determined that delivery is no longer futile.

Dated this 18th day of May ___, 2007.

A handwritten signature in cursive script, reading "Gary Spackman", written in dark ink. The signature is fluid and stylized, with a long horizontal flourish extending to the right.

GARY SPACKMAN
ADMINISTRATOR, WATER MANAGEMENT