



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

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MAY 21, 2008

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

BOB SHAFFER, WATERMASTER  
WATER DISTRICT NO. 34  
P.O. BOX 53  
MACKAY, ID 83251-0053

**RE: REGULATION OF ANTELOPE CREEK**

Dear Mr. Shaffer:

I received your letter dated May 5, 2008 regarding delivery of water to users on Antelope Creek. The letter states that you believe regulating the delivery of water from Antelope Creek while users on the Big Lost River are rotating water into storage is unfair and possibly illegal and that you intend to deliver water to users on Antelope Creek out of priority with the Big Lost River when users are rotating water into storage. In response, I am writing this letter to emphasize to you that neither the General Provisions for Basin 34 nor the Water Distribution Rules for Water District No. 34 provide for separate administration of Antelope Creek unless a futile call determination has been made.

I have attached a copy of a letter to the former Watermaster of Water District No. 34 providing guidance on Antelope Creek regulation and futile call determinations. The letter clearly states that Antelope Creek is to be administered in priority with the Big Lost River unless a futile call determination has been made. The letter also clearly states that the Watermaster must, as part of the futile call determination, attempt to deliver water to senior water rights that have been called for.

Both the General Provisions and the Distribution Rules have the effect of law and both recognize rotation into storage and call for the tributary to be administered in priority with the Big Lost River. Delivery of water out of priority with the Big Lost River as you propose would be illegal.

It appears from your letter that your main concern is with regulating Antelope Creek at times when demand from Antelope Creek is high but users on the Big Lost River are rotating rights into storage because demand is low. While it is common for the demand on Antelope to be higher than that on the Big Lost River early in the season, rotation during this period should be very rare. Recall that General Provision 3C provides that water may not be rotated unless it is otherwise deliverable to the place of use (the field headgate). If the natural flow is insufficient to deliver water to the places of use on the Moore Canal, demand is typically low since few users would choose to use storage water to deliver their rights. At such times, rotation would not occur and the natural flow from Antelope would go to the next in time user calling for water.

Although it is reasonable to compare Antelope Creek regulation with regulation above Mackay Reservoir since users in both areas do not have the benefit of rotation, we cannot ignore the differences between the two situations. Provisions for separate administration were decreed for the Big Lost River above Mackay Reservoir. However, those provisions were carried over from provisions in an earlier decree. No such history exists for Antelope Creek, and so no similar provisions were incorporated in the SRBA decree for Antelope Creek. There may have been opportunities for Antelope Creek water right holders to suggest such provisions during the adjudication, or by filing objections to either the SRBA Big Lost River general provisions or the SRBA Director's Reports. IDWR is not aware that Antelope Creek users sought to have Antelope Creek administered separately from the Big Lost River or to include some type of futile call provision in their water rights. The users can still petition the SRBA court directly for changes to the general provisions or inclusion of some type of futile call provision in their water rights. Given that considerable time has elapsed since the SRBA court has issued partial decrees and adopted the Basin 34 general provisions, it is questionable whether any petition to the SRBA court would succeed.

In closing, I want to emphasize that, as the Watermaster, it is your responsibility to deliver water in accordance with the applicable rules and laws. The applicable rules and laws clearly state that no water rights are to be delivered out of priority unless a futile call determination has been made. If you have any questions or want to discuss this issue further, please call me directly at 208-287-4959.

Sincerely,



Tim Luke  
Water Distribution Section

enclosure: 5/18/06 Letter to Bob Duke RE: Antelope Creek Regulation and Futile Call Determination (3 pages).

cc: WD 34 2008 file  
IDWR Eastern Region – Idaho Falls

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DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

May 18, 2006

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.

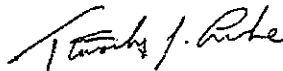
When addressing a futile call request, it may be necessary to current meter flows in the main and South Antelope channels at the river confluence, and then farther upstream and below the last diversion point. These metered flows may be used to establish the losses in the channels, and demonstrate that 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  
Mitchell Sorenson - 3871 W 2500 N, Moore 83255  
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