

October 3, 2008

TO: Tom Bassista
IDWR Eastern Regional Office
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-6105

FROM: Tom Waddoups
6 Tamarack Ct. Garden Valley, Idaho 83622

RE: Overview of Meeting on October 26, 2008, Idaho Falls, Idaho
Subject: Alteration of the North and South natural channels stream flows of Antelope Creek located near Grouse, Idaho.

Tom Bassista opened the meeting by stating the Idaho Department of Water Resources is allowing the alteration of the north channel of Antelope Creek near Grouse, Idaho, pursuant to Idaho Code 42-3806.

History

A. The distance from various places of use on the Hanrahan Ditch to the natural north and south channels of Antelope Creek was estimated to be 10 miles.

B. Discussed the purpose of permit # 34-S-317, the objection to the permit and the hearing on stream channel alteration permit #34-S-317 in the name of Jack Harrop, held on April 19, 2002.

C. Jack Harrop presented his rationale for requesting a stream channel permit to stabilize the north and south channel of Antelope Creek.

D. A discussion of altering the natural channels prior to 2007 resulted in conflicting statements without documentation, verification or data to support recollections of past history. Alvin Crawford, a past Antelope Creek WD34 Advisory Board member and long time rancher, stated the north channel of Antelope Creek had never been dry and straw bales had been placed in the channel at this point only one time.

E. The 2001 agreement to alter the north and south channels of Antelope Creek was discussed and considered a moot point as the agreement pertained only to the 2001 irrigation season and all irrigators had not signed the agreement.

The following points of interests were discussed in response to various property owners objecting to the alteration of the north and south channels of Antelope Creek.

1. It was clarified that blocking the north channel did not invalidate permit #34-S-317, however, the effectiveness of the sill was compromised.

a. It was established that the purpose of a permit is to determine if the alteration will be a hazard to the stream channel and its environment. It allows the Director to consider items affected by stream alteration and allows for due process.

b. Definition of alteration was presented.

2. Discussed the Jack Harrop Order signed by Bobby D. Fleenor ordering the

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approval of Permit #34-S-317.

a. Conclusion of Law #8 was stated in part, however it was pointed out the entire statement should be considered.

b. Jack Harrop Order: Conclusion of Law #3 was discussed. IDWR stated the permit requirement under Idaho Code # 42-3801 was not required as the department was enforcing Idaho Code #42-3806.

It was questioned and discussed if a water user could maintain, construct, or repair any stream channel up to 10 miles from a diversion structure. The response was Idaho Code #42-3806 had no distance requirements and the tarp dam blocking the north channel 10 miles from the diversion point was not a violation of Idaho Code #42-3806.

c. Jack Harrop Order: Finding of Fact #13 refers to Idaho Code #42-3801 which requires a permit to alter stream flow. It was considered relevant as there are no distance restrictions for any work in a channel associated with the diversion of water under a water right. (Idaho Code #42-3806)

3. The "Agreement of all Antelope Water Users" was not discussed as it had been declared moot.

4. The adherence and equitable application of WD34 Guidelines for Operation, Idaho Administrative Code, IDAPA #37.03.12 and IDWR Memorandums explaining the procedures to implement WD34 rules.

a. The following statement to clarify how a water master responds to a delivery call was discussed and agreed upon.

"The response to a delivery call by a water master is to curtail junior water rights in their order of priority to satisfy the called for water rights. A delivery call also initiates action to determine if water is deliverable to a place of use or if the call is futile."

b. The following rules pertaining to delivery calls were discussed.

1. Delivery Call IDAPA 37.03.12.07 "A request from a holder of a water right under the Prior Appropriation Doctrine." Bob Shaffer, water master said he did not curtail according to the priority rights but chose to block the north channel in order to provide water to more water users.

At one point of discussion it was brought to our attention by a log reference that an 1885 water right had been left on and released soon after the placement of the dam in the channel, making any judgment of water amount in question. The water master admitted this water right was left on in error. There were no comparable measurements or data on stream amounts or flow available at the Hanrahan Ditch diversion. Also measurements were not made on the flow diverted for each user on the Hanrahan Ditch.

2. WD34 Procedure Manual, 7.7.3. was discussed.

3. WD34 Procedure Manual, Paragraph 3.5.5

A Hanrahan Ditch water user claimed no measurements were taken at each user's place of use because it was a private ditch and they were "self regulated". The water master said if there were any complaints he would then take measurements. It was questioned if measurements were not taken how would one know how much water is diverted to each user on the ditch or canal? Adherence to WD34 Procedure Manual, Paragraph 3.5.5 is especially important when other rights are curtailed.

Summary and Comments:

The IDWR did not enforce IC #42-3801 and chose to enforce IC #42-3806. Participates were allowed to express their concerns pertaining to a sill permit, due process, IDWR Jack Harrop Order and their objection of allowing the alteration of a natural stream with out obtaining a stream channel alteration permit.

Quoting in part WD34Rule 3.5.5 which requires daily field records that clearly indicate the amount of flow being diverted by each user on the canal (ditch) appeared to change some attitudes from confrontational to the possibility of an agreement to maintain prescribed ratios of water flow for each channel of Antelope Creek.

The IDWR decision to enforce IC #42-3806 without any limits of distance to clean, maintain, construct or repair any stream channel will allow water users or their agents with diversion points on the Hanrahan Ditch, north and south channel of Antelope Creek to maintain flows between the natural channels without a permit.

Jack Harrop's application for a permit to install a sill to stabilize the north and south channels and the prudent review of the issues and foresight of Bobby D. Fleenor on the extreme problems that would occur if the sill was not installed, resulted in all water users complying with the Jack Harrop Order for five years.

The requirement to obtain a stream channel permit stopped the previous practice of individuals illegally altering the natural stream.(Idaho Code #42-3801)

The decision of IDWR to allow a water user or his agent to clean, maintain, construct or repair a stream channel without a permit has placed the water users in the Antelope Valley with the troubling conditions that prevailed prior to 2001.

Please reply with any comments or corrections you may discover. This will provide a record of the issues discussed at the meeting held on September 26, 2008.

I would like to express my appreciation for your attention to our concerns and thank you and Ernie Carlson for managing a fair and professional meeting.

Sincerely,

Tom Waddouge