



State of Idaho

DEPARTMENT OF WATER RESOURCES

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MAY 13, 2009

TOM WADDOUPS
22914 N. SHORTHORN CT.
SUN CITY WEST, AZ 85375

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

RE: DELIVERY OF WATER FROM ANTELOPE CREEK IN BASIN 34 – 2009

Dear Mr. Waddoups:

This letter is written in response to your letters of January 12, 2009 and April 16, 2009 to Tom Bassista of IDWR. In those letters you asked for clarification regarding how the Watermaster will deliver water on Antelope Creek in 2009. Additionally, you asked for records from the 2008 delivery season and expressed concerns regarding the Watermaster's actions during 2008 and the potential that other users could alter the stream channel and influence the deliverability of water under valid water rights. Specifically, your concerns center on how the Watermaster has regulated the division of water between the two channels of Antelope Creek below the bifurcation just upstream of Grouse, ID and whether he will perform similar activities in 2009.

I visited the site last September and spoke with Mr. Bob Shaffer, the Watermaster for Water District No. 34 regarding this issue. Based on these discussions and a review of the delivery records, it appears that Mr. Shaffer placed a tarp in the stream on August 12, 2008 to attempt to deliver water to senior water right holders downstream. Specifically, water rights bearing a priority date of 1884 and senior were not being filled at the head of the Hanrahan Canal and the Crawford diversion just above the Hanrahan. According to Mr. Shaffer, consolidating the flow in Antelope Creek to the southern channel reduced the natural losses to the point where 1884 water rights could be delivered throughout the creek, including your 1884 water right from Cherry Creek. This type of stream consolidation is performed in other streams in the state for the same purpose.

Mr. Shaffer's work was for the purpose of delivering water to senior water rights and resulted in more water being available to users on Antelope Creek. Copies of the delivery records for the Antelope Creek are available on the IDWR Internet site at the following address:

http://www.idwr.idaho.gov/water/districts/WD34_Big_Lost/default.htm

For the 2009 season, and other seasons in the future, it is likely that the watermaster will place a tarp in the stream to make water available to senior water right holders when the 1884 and senior water rights are not available at the canal heading.

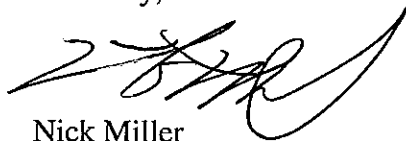
In your letters you question whether Mr. Shaffer should have a stream channel alteration permit to place the tarp in the stream, and whether he (rather than the water right holders) should be performing that activity. While these are valid questions, it appears from your letters that you have a larger concern regarding the potential that any water user could perform activities to consolidate the stream and cause injury to your water rights. Whether any user could legally perform such activities, either with or without obtaining a stream channel alteration permit, is an overly broad question as the answer would depend on the specifics of the situation. To date, it appears that such activity is not occurring. If users are performing activities in the stream that are or may influence the delivery of water rights, please contact IDWR or the watermaster and we will evaluate each situation and determine whether a stream channel permit should be obtained and provide guidance regarding the proper action or protocol to be taken.

Regarding Mr. Shaffer's activities, rather than injuring your water rights or your ability to take water, Mr. Shaffer's activities resulted in raising the priority date on the creek so your 1884 water right was in priority longer (had the 1883's not been deliverable downstream, your 1884 water right from Cherry Creek would have gone out of priority). Additionally, it seems preferable that the users authorize the watermaster to place the tarp, so one individual is doing the work, rather than a number of uncoordinated activities by several users.

IDWR does not believe the watermaster needs a stream channel alteration permit for this activity. Although he could apply for a stream channel alteration permit, the value of doing so is limited. Given that the tarp is a temporary structure, placed by hand, and is conducted for the purpose of relatively short-term water delivery, it is likely that IDWR would issue the permit and the work would be completed just the same.

I hope this letter clarifies the situation and provides some confidence that the watermaster and IDWR will respond appropriately in order to deliver water by priority and in a manner that is consistent with the law. If you have any further questions on this matter, please contact IDWR.

Sincerely,



Nick Miller
Staff Engineer
Water Distribution Section, IDWR

c:
IDWR Eastern Region
Bob Shaffer, WD34