



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

August 15, 2008

Lawrence Kimball  
35 Laidlaw Road  
Carey, ID 83320

(via facsimile)

*faxed to Lawrence Kimball  
8/15/2008*

Dear Mr. Kimball:

During our telephone conversation we briefly discussed the futile call concept. After getting off the phone, I was able to find the attached letters relating to this concept.

If you have any further questions, feel free to contact this office at your convenience.

Sincerely,

Corey Skinner, PE  
Water Resource Engineer

Enclosures: 7/25/2007 Letter from Jim Stanton to James Peterson  
7/11/2002 Letter from Norm Young to Lee Peterson



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

---

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

July 25, 2007

James Peterson  
201 Little Wood River Rd  
Carey, ID 83320

RE: Water Deliveries On Muldoon Creek

Dear Jim;

Yesterday I spoke with Mr. and Mrs. Guy Peterson regarding the cutoff of their water rights in order to provide water from a downstream user. They told me that water had not reached the downstream user after four days, and asked for clarification on what is considered a futile call. The same question came up on the Big Wood River in 2002, prompting a letter to the watermaster from one of our former administrators; a copy of the letter is enclosed for your information. There is no legal definition of a futile call that applies in all cases. If you want IDWR to make a determination in this matter, please contact Allen Merritt in this office. If this issue is a problem in your district, you can certainly add a resolution to the minutes of your annual water meeting detailing how futile calls will be resolved.

Regards,

James E. Stanton  
Sr. Water Resource Agent

Cc: Allen Merritt, IDWR  
Guy Peterson



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

July 11, 2002

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

**VIA FACSIMILE (208) 886-2451**

Lee R. Peterson, Watermaster  
Water District 37 & 37M  
P.O. Box T  
Shoshone, Idaho 83352

**RECEIVED**

**JUL 15 2002**

Department of Water Resources  
Southern Region

Re: Administration of Big Wood River – Futile Call

Dear Lee:

Your letter dated July 10, 2002, asks for guidance concerning distribution of the flow of Big Wood River in the event that the water supply is insufficient to reach the diversions of senior priority rights decreed from the river downstream from the District 45 Canal near Bellevue. Without specific details concerning the rights calling for water and the flow rates/stream losses existing at this time, I can only provide the general framework for addressing a futile call.

1. A watermaster has the responsibility to distribute available natural flow to the holders of water rights asking for water for use in accordance with their rights. In Idaho, this distribution must be in accordance with the priorities of the rights – a right with the earlier in time priority date must be fully satisfied in accordance with calls for water under the right before water is distributed to another water user calling for water under a right with a later in time priority date. In a stream with large channel losses such as the Big Wood River, it can be necessary to curtail significantly more diversion under upstream junior priority rights than is needed to supply senior downstream rights. Although this seems like an inefficient use of the available water supply, the senior user's call must be satisfied unless the amount of water reaching the senior user's point of diversion is insufficient to make beneficial use under the right.
2. If curtailment of all upstream water rights having a priority date junior in time to that of the downstream senior right for which water is called for does not result in flow of useable amounts reaching the point of diversion for the senior water right, the call can be determined to be futile. When this determination has been made, the available water can then be delivered in accordance with priority of right to the upstream junior rights. The determination of whether the flow received by the senior user is a useable amount can be difficult

Lee R. Peterson, Watermaster  
July 11, 2002  
Page -2-

3. Because of factors such as the variance in stream flow during the day and commingling of water from other sources for use by the holder of the senior right. If the senior user does not agree that the call is futile, you should consult with the department before making a decision to curtail distribution to the senior user.
4. The responsibility for determining whether the river needs to be blocked off rests with the water user. If after you determine that water is available for diversion, the water user has the responsibility to provide the necessary check structure, headgate and measuring device. Under Idaho law (Section 42-3806, Idaho Code) the wateruser is authorized to do work in the stream channel as necessary to divert the water. Other approvals may be needed from other state and federal agencies. Any water diverted to junior priority water rights under a futile call must be beneficially used by those junior priority rights.

Please give me, Tim Luke or Allen Merritt a call if we can provide assistance on determining the appropriate action on specific distribution concerns.

Sincerely,

Dictated by Norm Young  
and finalized without  
signature to avoid delay

Norman C. Young  
Administrator  
Water Management Division

Cc: Tim Luke  
Allen Merritt.