

RECEIVED

SEP 23 2011

DEPARTMENT OF
WATER RESOURCES

MIKE DOTZENROD
COUNTY DIVIDE RANCH LLC
3776 WEST 3700 NORTH
DARLINGTON ID 83255

September 19, 2011

Gary Spackman
Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-6700

Dear Director Spackman,

As you probably know, the pre-hearing conference on the Pehrson's damming of the North Channel of Antelope Creek, held September 1 in Arco, ID, appeared to have had some success. The Pehrson brothers, Loy and Byron, agreed to remove the dam this fall, though some of their statements put qualifiers on that removal: control structures being in place, the amount of water allowed to pass through, timing of the dam removal with water being present, etc.

The only legal question of the dam placement made by James Cefalo, the IDWR conference moderator, was one of stream alteration. I do not believe that is the only violation in question, as was mentioned in my previous letter to you dated July 8, 2011. I believe, as do many others, that the dam should be removed immediately because it is an illegal diversion. The only legal justification for the diversion that has been offered by IDWR and/or the Pehrsons is that there is a recharge right at that site. That appears to be true. But the diversion of water for recharge at that site was illegal when the dam was put in place in the fall of 2010, and early this spring when the dam was protested by myself to Nick Miller, and certainly since the recharge of water was mandated to stop about July 19th, 2011. That diversion has been illegal because it does not meet the legal Requirements and Guidelines for Recharge as put forth in the big Lost River Recharge Settlement and Stipulation Agreement and its Plan of Operation of April 21, 1997.

Certain conditions must be met before recharge can happen during the irrigation season. One that is often cited and has been regularly enforced since the recharge water right

permits were issued by IDWR is that “ *recharge downstream from the Mackay Dam will not occur unless the flow at the Arco gage is 60 cfs or more, measured as a three consecutive day average*” This has not happened since July 19th. This requirement for recharge has been ignored for two months. Why?

Even more damning is the disregard for the requirements for recharge laid out before the 60 cfs Arco gage rule: “ *Diversions of water for recharge shall be limited so as to not de-water (dry up) stream channels or increase the extent of de-watered stream channels at the time of the recharge diversion. Many tributaries to the Big Lost River and the Big Lost River itself do not have wetted channels for the entire length of the stream channel during portions of the year and during periods of drought.....The water supply required for maintaining wetted stream channels is self-limiting since, as the ground water is recharged in the vicinity of the stream channel, smaller amounts of water will be required to maintain the stream and larger amounts of water will be available for diversion for other purposes. Additionally, the diversion of water for recharge from tributaries to the Big Lost River should not increase the amount of dry channel that exists for that tributary.*” Plan of Operation, page 3, paragraph 1.

Conditions of Approval for the diversion of Antelope Creek at the UC and 3-in-1 canals in Water Permit Report 34-7571 of 11/05/2007 page 6 states: “*approval of this right is subject to the Plan of Operation and other terms and conditions as set forth in the Settlement Agreement and Stipulation dated April 21, 1997.*” This dam violates the conditions of this water right. This dam is de-watering the stream channel below the dam. It de-watered the stream channel during recharge when there were 60 cfs at the Arco gage, and in so doing increased the amount of dry channel that exists for the North Channel of Antelope Creek.

Operating this diversion by rule would solve the when and how of this diversion’s operation. If no recharge water is legally available, water passes downstream. If recharge is available and can be measured by the Watermaster, then some of the water can be diverted as long as the channel has enough water in it to reach its end at the river.

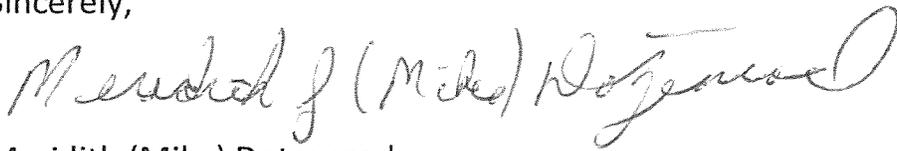
Recharge water is usually available when there is ample flow of surface water. During times of high water, flooding, etc., the recharge right would be on and water could be diverted to prevent flooding downstream. That is one of the stated purposes of the recharge plan. It should help prevent flooding the Pehrsons under most circumstances.

There was some concern voiced by the Pehrsons at the conference that having water at the diversion now presented a problem with dam removal. There will be water at the diversion in small amounts until irrigation season is over, especially now when there is freezing at night, irrigators shut off pivots and a larger quantity of water will flow in the channel. But even if there is water at the dam, it could easily be removed by a back-hoe or crawler-hoe sitting on the bank. The dam can be removed now.

I would appreciate a pertinent response, and if not, why?

Thank you.

Sincerely,



Meridith (Mike) Dotzenrod

Cc:

Nick Miller
IDWR
PO Box 83720
Boise, ID 83720-6700

Roger Totten
Watermaster, Water District 34
PO Box 53
Mackay, ID 83251

Jim Rindfleisch
Director, Big Lost River Irrigation District
PO Box 205
Mackay, ID 83251

Seth Beal
Chairman, Advisory Committee, Water District 34
Butte County Commissioner
Butte County Courthouse
Box 737
Arco, ID 83213