

Miller, Nick

From: Miller, Nick
Sent: Monday, May 20, 2013 12:46 PM
To: Roger Totten (rt@atcnet.net); waterdist34@atcnet.net
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Subject: Administration of The Big Lost River during the connected period

Roger,

This email is a follow up to our telephone conversations this morning and over the last week regarding administration of the Big Lost River above Mackay Reservoir. We spoke on Tuesday, May 14 because that was the third day the Howell Gage had reached 750 cfs and the rights above Mackay Reservoir, pursuant to item #6 of the SRBA General Provisions for Basin 34, should no longer be administered as separate from rights below the reservoir. However, you stated during that phone conversation that the river had not physically connected to the reservoir (water was making it to the Chilly Bridge, but had not made it to the reservoir). We discussed that if you wanted to make a futile call, you still needed to regulate the diversions above the reservoir for a few days and, pursuant to part c of General Provision #6, make measurements at the Pence and Donahue Bridges. Your response was that the river would physically connect in a few days anyway and that, rather than pursue a futile call, you would regulate the diversions above the reservoir. Yet, when I spoke with you again later in the week, you stated you were delivering 1886 rights below the reservoir and 1900 above. Further, you expressed a belief that regulation of rights above the reservoir does not impact the inflow of the reservoir and that you would not and should not regulate them to the same priority as the rest of the river. We discussed that there is a way to determine if regulation is futile and that you have an obligation to regulate the diversions to the same priority as the rest of the river until you can demonstrate futility.

When we spoke again this morning, you stated you are still delivering rights above the reservoir out of priority with those below the reservoir. I understand you hold a very strong belief that what you are doing is best for the users and the valley, and I can sympathize with the difficulty of following rules that contradict what you believe to be the best course of action, but I must stress that you have an obligation to follow the rules and the rules are clear on this issue. I also must stress that there is an option to both follow the rules and do what you think is right; you can attempt to demonstrate a futile call.

It is also clear from past accounts and my own experience with past watermasters in your district, that your views on delivery of water above the reservoir were also held by previous watermasters and that this issue has been raised in the past. You have also indicated that you have data that supports your position that regulation of diversions above the reservoir does not impact water right holders below Mackay Reservoir. Given the persistence of this belief among watermasters, I think it is important to address the question and work toward eliminating the conflict between the rules and watermasters' beliefs.

We may be able to work out a long-term solution to reconcile the rules and the beliefs, but until then the rules govern what you should deliver. You must immediately regulate users above Mackay Reservoir to the same priority date as users below the reservoir until the flow at the Howell Gage does not exceed 450 cfs for three consecutive days, or until a futile call has been demonstrated and approved by IDWR.

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