

Irrigators fight plan to count flood releases against water rights

Sean Ellis

Irrigation entities in the Treasure Valley area of Southwestern Idaho are vowing to go to court if necessary if the state continues with its plan to count flood control releases against senior water right holders.

BOISE — Treasure Valley irrigators are prepared to go to court to stop the state's plan to count flood control releases on the Boise River system against stored water rights.

Idaho Department of Water Resources officials say the plan would bring the Boise system into compliance with state water accounting law.

Not doing that, they say, would adversely affect some irrigators' stored water supplies and could result in the state surrendering legal control over the water to the federal government.

But Treasure Valley irrigators say the plan goes against established Idaho water law and violates a 62-year-old agreement governing flood control releases they have with the Army Corps of Engineers.

When the three reservoirs on the Boise River system reach a certain level in the winter, water is released to prevent flooding of Idaho's largest urban area. As snow melts, the reservoirs fill again.

But some years, such as during a drought, the reservoirs don't completely refill.

The IDWR's plan "is convoluted, it's confusing and it's contrary to established Idaho water law," said Daren Coon, secretary-treasurer of Nampa & Meridian Irrigation District.

He said the department's plan could result in senior water right holders not having enough water later in the growing season, when they need it most.

NMID and other water delivery entities in the valley are fighting the proposal through the IDWR's administrative process.

"If we're unsuccessful there, then we'll definitely go to court," Coon said.

Growers with senior storage rights would be impacted the most by IDWR's plan, Coon said, because their storage rights are satisfied first as reservoirs fill in the spring and those flood control releases would count against their rights.

The Boise system's arrangement with the Army Corps regarding flood control releases was challenged during Idaho's Snake River Basin Adjudication, a legal process that sorted out more than 150,000 water rights.

The courts have ruled that the IDWR director has discretion to determine what constitutes the filling of a storage water right and the department believes that under Idaho water law, water right holders are required to take the water when it's available to them, said IDWR Deputy Director Mathew Weaver.

"If they let that go, it's lost to them," he said. "The water is then available to the next person in line who will put it to beneficial use."

The department believes flood control releases should count against stored water rights, Weaver said. "Should (senior water right holders) be able to get a second fill ahead of junior water right holders getting a first fill?"

Roger Batt, who is representing several farm organizations and irrigators in the Treasure Valley on this issue, said that because the water is released during the winter, the irrigators with the rights to that water never got a chance to use it.

Flood control is not considered a beneficial use, "So why would the department be counting it as water that has been put to beneficial use?" he said.

Lyle Swank, watermaster of the upper Snake River system, Idaho's largest water district, agrees with the IDWR and said the Boise system's stance could result in the federal government, the largest water right holder in the system, determining how the water is used.

But Pioneer Irrigation District Manager Mark Zirschky said the IDWR's plan violates the state's "first in time, first in right" water law and irrigators are prepared to fight it in court, if necessary.

"The water in those reservoirs up there is our bread and butter. We will protect it at all costs," he said.

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