

Matea McCray
3470 Cobblestone Ln.
Idaho Falls, ID 83404
Karon Huggins
2132N 2900 W
Arco, ID 83213

Subject: In the matter of Application for the Transfer No. 83745 in the name of Sunset Farm & Ranch LLC. *Huggins Witness and Exhibit List*

To: Sunset Farm & Ranch

Please take notice that protestants Matea McCray and Karon Huggins hereby provide the following Witness List and Exhibit list.

Witness List:

Marc Hansen
Michael Telford
Lukas Yokey
IDWR Employee involved with this transfer

Exhibits: 100-200

101-1 McCray Analysis
101-2 Settlement 1
101-3 Settlement 2 Recharge
101-4 Settlement recharge3
101-5 Brockway Report 2012
101-6 Response to Brockway Report 2013
101-7 Recharge Request
101-8 Recharge Denial
101-9 Police Report Final
01-10 District Land Request 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2021, I served a true and correct copy of the following described pleading to all required parties via email.


Matea McCray, Representative for Karon Huggins

Matea McCray Analysis of An Empty Big Lost River Near Arco On Down, IDWRs Responsibility Equally to Idaho Citizens, Real Estate Acquisition Plans for Farms and Ranches, and Sunset's Specific Application Request Transfer No. 83745

Prepared: January 21, 2021 by Matea McCray



The following analysis is the "opinion" based on knowledge and past history of Matea McCray. It is submitted for IDWR's consideration in decisions that impact the flow of the Big Lost River from just above Arco, Idaho on down.

Current Status of the Big Lost River at my Mother's Property January 21, 2021:

The river receives 50CFS out of 2B gage at the exit of the Mackay Dam and additional water from multiple tributaries below the Mackay Dam including Antelope Creek and Alder Creek. No ditches should be carrying any water during the non-irrigation season (i.e. the Darlington Ditch, the East and West side of the river). Any stated justification for water diversions to feed ponds for stock water is, if not illegal, immoral and unethical. Only in-stream stock water from the river or natural water ways should be available during the non-irrigation season unless there is 60 CFS at the Arco Gage. Instead, a stock water well right should be used for watering livestock off stream. It is my opinion that these stock water diversions into ponds under the guise of "stock water" are actually "recharge during the non-irrigation season" which is not allowed per the *April 21, 1997 Big Lost River Recharge Settlement Agreement and Stipulation* (Sattachments). All tributaries to the Big Lost River should free flow straight through the natural water ways into the Big Lost River with zero diversions during the non-irrigation season. If that were the case, there would currently be water in the river at the Huggins' home ranch today. Instead, it is empty, has been empty, and has not contained a drop of water for over a year.

Real Estate Acquisition Plans:

Corporate Agriculture is not only submitting these irrigation water transfers as a Water Acquisition Plans throughout Idaho, but they are additionally using them to their benefit as Real Estate Acquisition Plans. Making other people's water rights unusable by emptying the river under the guise of "futile call" and removing irrigation water delivery systems, significantly devalues land. It is my opinion that IDWR is being/has been unknowingly used to devalue my mother's property to 10 cents on the dollar by drying it up so that others (in general) can later try to swoop in and purchase it for a penny on the dollar thus adding it to their land portfolio. When one owns land and water, they can purchase ugly looking dried up land and then put the water back in the river and on the land that they purchased for a penny on the dollar that they purposely dried up to lessen the price.

Specific Actions by Sunset:

Last year on Martin Luther King weekend, our new neighbors (Sunset) ripped out my 80 year old mother's border fence, trespassed on her property, and dug/pulled the edge of the river bank backwards over the original fence line. Any decent neighbor, even if they trespassed, would have the common courtesy to replace fences that were damaged. They tore out and entire section of a boundary fence between the Huggins/Sunset properties, dug/pulled the river edge backwards to the point that it is now likely on their newly acquired property on the boundary line. The original fence line will have to have a "jog" in it to replace the fence on the original boundary line. They installed a perforated pipe into the river approximately 4-6 feet deep that feeds their pump and would take up any and all "rising water" before it shows up on the surface of the river, dug out (lowered) a channel on their pump side that makes



it so all flow in the river will feed their pump, and bermed the river to the height of the river edges so that no water can flow down stream. I informed USDA (in case it was another equip project), I informed Corp of Engineers, I informed IDWR, I informed the Butte County Sherriff's office (attachment Titled "Police Report Final"). No one seemed to have any problem with what Sunset did on my mother's property.

Mr. Telford has previously pushed for actions to put land into the BLRID district that are out of district and remove original water delivery systems (ditches, canals, headings (like the Munsey under a USDA cost share equip project.)) This attachment is titled "District Land Request". Sunset Farms seems to be able to do whatever they want, regardless of the damage to others, and not only has no one stopped them, often, their actions will be justified and legalized by in hindsight by the 'powers to be'.

In general and not specific to any one person, claiming "historical practices" in the valley on activities that harm others has been used as a justification many times to codify (through IDWR) an action that should not have been allowed. USDA approved an "equip" project that removed the delivery system and put in a new system that did not cover approximately 90 inches of other people's water irrigation rights. Someone told them that 'Huggins were not interested in being on that water system' and they (USDA) failed to verify that incorrect statement of fact.

Real Estate Acquisition employees often put themselves on water boards, attends BLRID water meetings, provide overviews/presentation at BLRID water meeting to three IDWR Boise employees at the water meeting in Spring 2020. In response to Interrogatory 17, "Michael, Telford helped form the ground water district and sits on the ground water district board representing the south end of the ground water district known as District 6." IDWR needs to ensure that they are clear from any perceptions of a Conflict of Interest through personal relationships with individuals that they personally know through years of applications to IDWR.

Sunset initially applied for a transfer of surface water rights "from the river" and then after the process started, they revised their application to allow the water to be transferred through their canal systems. The revised application for this transfer was so different than the original submittal, that IDWR should have voided this proposed transfer and filed a whole new notice.

Previous misstatements by Michael Telford during the IDWR Prehearing Conference:

It is Matea McCray's perception that there were two misstatements during the pre-trial hearing by Mr. Telford: 1) The "wastewater" that Sunset drops into the river down stream of the Arco Gage has a pickup pump that has been used. Initially, he claimed to not have used the pickup pump and later claimed he used it. 2) Mr. Telford claimed ignorance to the large USDA Equip Project that removed the Munsey Canal for delivery of my mother's 60 inches of water (and 30 additional inches belonging to multiple "others") and claimed that his only contribution to that project was a \$6,000 cost share. However, everyone we spoke with concerning that project once we realized that it had been done without notification to us referred to it as the "Telford Project". That indicates to me that Mr. Telford was the instigator/originator of that project through BLRID.

Foreign Financing Potential.

In previous Paperwork, Mr. Telford has referred to himself as the "managing member" of Telford Lands, LLC (attachment June 2012 letter titled). It is not clear to me who owns the properties involved with Sunset Farm and Ranches, LLC, or if that is a new name for the 2012 Telford Lands, and it not clear who actually owns the subject property bordering my mother's home farm. Originally, I thought it was Mike Telford based on the large number of white pickup trucks from his pickup fleet. Then I was told it was not Mike Telford's land, it was instead Marc Hansen's. Then at the BLRID water meeting where Mr. Telford gave a presentation to IDWR HQ personnel in the spring of 2020, Mr. Telford told me he had 'directed his lawyers to write a letter to my original protest on this water transfer and let me know he agreed to "subordination" of the earlier water rights being transferred in the case of a "broken river" with rising water' (i.e. my original protest). In response to Interrogatory 23, Mr. Harris informed me that "Michael Telford and Marc Hansen" own the subject property. Years ago, when I inquired into what Telford Farms was, I was informed they had a funding source outside of themselves and it was a corporation. Around that time, Mr. Telford identified himself as a "managing member" (Attachment Titled "District Land Request"). In general, it may behoove IDWR to ensure that approval of these type irrigation applications that harm everyone at the lower end of the river do not involve any foreign entities at the expense of Idaho citizens. Although Mr. Harris has informed me that Idaho Rule of Evidence 502 allows for nondisclosure as "privileged" (which is fine for me), that answer is inadequate for IDWR.

Specific points for Sunset Farm and Ranch, LLC for Transfer Request

Sunset purchased this land that previously belonged to Art Quist with the water rights and land specified by the deed. In Sunset's answer to Interrogatory 13, Sunset states that there is approximately 150 acres within the BLRID district. On Interrogatory 12, Sunset states, "The proposed transfer will create 612.5 acre permissible place of use, but the irrigated acres will be limited to 442 acres. Sunset will be able to irrigate up to 612.5 acres if Sunset is able to lease Larry Quist's water rights, which Sunset did lease in 2020 and 2021." Sunset should not be able to irrigate up to 612.5 acres of land under any condition. They should only be allowed to irrigate the same amount of land allowed when Art Quist owned the property because expansion of acreage further exacerbates an empty river. People on the Arco end of the river are unable to raise crops or recharge the groundwater for their domestic wells while some individuals buy property and hire lawyers allowing them to expand the numbers of irrigatable acreage outside of the BLRID water district.

Previously identified activities that IDWR should prescreen before filing any water applications in Basin 34 - General Objections

Understanding the following:

- A. The # 1 priority for water rights in the State of Idaho is domestic wells per Article XV, Section 3 of the Constitution of the State of Idaho;
- B. Section 1 of the 14th Amendment to the US Constitution states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.";

- C. The Big Lost River has been empty of water during the irrigation season on the lower (Arco) end of the river often since IDWR allowed the "West and East Channel of the river" designation and even after the adjudication;
- D. Natural waterways and the river are the mechanisms for domestic well (groundwater) recharge;
- E. That under "Conjunctive Management", ground water and surface water are "one in the same" in that the use of either impacts the other within a set system/area.

We (Matea and Karon) object to any and all water right transfers through IDWR that result in any one through all of the following 8 harmful practices and believe applications should be screened before placing legal notices/announcements in papers:

- 1) Any water being transferred from in-district to out-of-district should be denied. The only recharge (year round) of irrigation wells and water table outside of the BLRID District should take place during the times of flood conditions on the Big Lost River and every water way and every person with a water right should be allowed to recharge their land and water table during that time, equally. Those irrigation wells outside of the district need to impact their own groundwater table for crop irrigation, not BLRID District 34 waters.
- 2) Any water right that is being moved from a tract of land that held both a surface and groundwater right for the same acreage should not be expanded for use on previously unfarmed acreage elsewhere unless comparable acreage from the original place of use is abandoned.
- 3) All transfers and changes to the points of diversion allowed off of the river or other waterways are subject to shrink along the route. Downstream landowners on that diversion must be notified individually, by mail, of the proposed change to that water system by IDWR so that they can determine the impact to their water rights/land. The descriptions of the changes in the Legal Notices section of newspapers are woefully inadequate for an average person to analyze how the proposed changes will impact their property.
- 4) Piping delivery systems and lined canals (to prevent shrink) further exacerbate the lack of domestic well recharge.
- 5) No one should ever be allowed to "assume" or claim an "abandoned" water right except for the individual that owns the land that water right was originally on. Unused water rights should go to "next in time" and stay within the system. IDWR has a moratorium on irrigation wells in Basin 34 because that basin is already over appropriated as apparent from an empty river.
- 6) Any large holding ponds should not be allowed to fill during the non-irrigation season when there is no water in the river below the city of Arco. The only water that should be delivered to holding ponds is water delivered during flood conditions in the spring or water being delivered per one's water rights during the irrigation season.
- 7) There is no remaining "waste water" to be consumed for irrigation purposes in Basin 34. Any waste water available as identified by applicants as "waste" that does not naturally and currently terminate on applicant's property is water that flows through downstream property owner's land that would be damaged by giving that water to the applicant for additional irrigation purposes.
- 8) Diversions during the non-irrigation season for "stock water use" when there is less than 60 CFS at the Arco Gage per the attached *April 21, 1997 Big Lost River Recharge Settlement Agreement and Stipulation*.

Harm from Practices 1-8 above are obvious due to the fact that IDWR has allowed the lower end of the Big Lost River to go dry for most of the year over the past 30 years. This resulted in devastating impacts to the City of Arco and everyone in the Southern part of Butte County with hundreds of domestic wells running dry at the expense of the domestic well owners to subsidize a select few farmland irrigators. Additionally, senior water right owners have been denied their irrigation water under the guise of "futile call" in the river caused by these practices. Irrigation water delivery systems have been allowed to be removed at the expense of many for the benefit of few, which prevented delivery of deeded water rights. To allow these corrupt practices "knowingly" harms everyone on the lower end of the river and benefitting a few "elite" at the expense of "many" goes against the US Constitution (Item B) above.

Inclusion of Huggins December 9, 2021 legal document:

Titled *IN THE MATTER OF APPLICATION FOR TRANSFER NO. 83745 IN THE NAME OF SUNSET FARM & RANCH LLC: OBJECTION TO MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT* has been included with one sentence corrected for editorials as follows:

"Per the following motion, *"Sunset Farm & Ranch LLC ("Sunset"), by and through its undersigned counsel, hereby submits this Motion for Summary Judgment and Memorandum in Support. This is a dispositive motion, which must be filed on or before January 8, 2021. Notice of Hearing and Scheduling Order dated November 2, 2020"*, this is our objection.

In line with IDAPA 37.01.01.260 (as a "motion"), this is our objection. Please note that for some reason, I was not able to find IDAPA 37.01.01.565 (as a "prehearing motion") on the internet as referenced in Mr. Harris' original motion. Quoting Mr. Harris work, "This motion and associated memorandum concern the contested case pending before the Idaho Department of Water Resources ("IDWR" or "Department") on Sunset's transfer application, as amended ("T83745"). James Cefalo is the designated hearing officer (the "Hearing Officer")."

I. ARGUMENT

A. Response to, "The original basis for Huggins' protest is fully addressed with a subordination provision that has already been stipulated to by Sunset."

The original basis for Huggins protest was water in the river, not in the Arco canal. Once Sunset modified their Transfer request, I then responded with a hand carried protest within the timeframe requested to Mr. Cefalo. I also wrote a check to IDWR for that modified protest which was refused by IDWR since it was a modification to the original protest just as Sunset's transfer request was a modification to the original transfer request with nothing remaining from the original filing. Subordination is only applicable to water in the river, not in the Arco canal. Sunset has already significantly expanded the number of acres being watered on the subject property from what it was under Mr Quist's ownership and it is obvious to me that they expect to expand more.

B. Response to, " As a matter of law, the approval of T83745 will not violate the constitutional preference provisions found in Article XV, Section 3, of the Idaho Constitution."

The river is already empty, almost year round. The exception these days is when we are in flood conditions. Domestic wells are priority 1 in the state of Idaho. This transfer from the river to a canal/piping system further magnifies an empty river with no recharge to the ground water table level. If any of these surface water rights that Sunset plans to transfer went with a supplemental ground water right, this results in an expansion using a supplemental right as a primary right, thus allowing for a doubling of the acres and water used to irrigate those acres. Idaho water law is subordinate to the US

Constitution and the State of Idaho's Constitution has to be within the US constitution. Allowing dual use of water goes against the concept of Conjunctive Management rules set for by IDWR.

C: As referenced in Sunset's Subject Motion: "The water resource itself is owned by the State of Idaho: "All of the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, . . . Idaho Code § 42-101." We agree that IDWR is the responsible agency to ensure water actions favorable to one party do not adversely impact other party. In this case, the other party is everyone downstream the point of the empty river whose groundwater table is impacted to the point that they must deepen their domestic water supply. This results in many individuals subsidizing agricultural irrigators at the expense of their home faucets. I would like to direct IDWR to Senator Crapo's recent questioning of Amy Coney Barrett where he specifically asks who is responsible for damages in water decisions, the state agency or the court. I believe it is located here: <https://www.youtube.com/watch?v=BJJ5xdCNL70> and/or here https://www.youtube.com/watch?v=wH8J477_L28. This is why I believe that it is the responsibility of IDWR to prescreen all irrigation requests up front to ensure that approving that action would not result in damages to others domestic and irrigation. The City of Arco has deepened their water well several times over the past 40 years. This is funded by property taxes. It is not reasonable for IDWR to assume that individual citizens should pay \$300-\$400 per hour to hire water lawyers to stop harm from emptying natural waterways as far as depleting the groundwater table. In most cases, the average citizen is not even aware of IDWR or water rights... they just want their faucets to work.

D. In reference to the following statement: "Similarly, Huggins' argument for rights of river front property owners is unavailing. Huggins is advocating for a riparian system of water allocation." My parents purchased their land in the early 1970's and they purchased river front property. As far as I can remember, the river was never dry until after the adjudication process took place. The state of Idaho may write water law so that they believe that they do a "taking" by displacing every drop of water in a river, but the United States Constitution states otherwise and Idaho law must be equal or more conservative than US law. An empty river year round is definitely a "taking" especially when "short water supplies" are the direct result of over appropriation of irrigation water in a water basin. Additionally, the burden of proof should be on an applicant that a change to water will not damage others when they file an IDWR should verify that before publishing a notice in a paper.

E. The original purpose of the State of Idaho Adjudication Court was to allow a farmer/rancher to walk in and represent themselves in court to make or prevent a change in a water right. I do not know if this is still the case, but it should be because \$300 to \$400/hr is a huge amount of money to prevent harm to one's property and I am sure the water court was not set up to enrich wealthy people and their lawyers by making it impossible through financial hardship for the average citizen to defend themselves.

Respectfully submitted Dec. 9, 2020.

Original was signed on Dec. 9, 2020 by:

Matea McCray
Representative for Karon Huggins "

RECEIVED

JUN 22 1995

Department of Water Resources
Eastern District Office

AGREEMENT

This Agreement is entered into this 5th day of June, 1995 by the applicants of water right application for permit nos. 34-07571 and 34-07573 for the purposes of:

- 1) Adoption and support of the PLAN OF OPERATION, BASIN 34 RECHARGE, dated May 23, 1995 attached hereto and made a part of this Agreement.
- 2) Withdrawal of protests by the applicants for water right application for permit no. 34-07573 against application for permit no. 34-07571.
- 3) Agreement by applicants for water-right application for permit no. 34-07571 not to protest application for permit no. 34-07573.
- 4) Providing mutual support for approval of both water right application for permit nos. 34-07571 and 34-07573.

Signed and effective the day first above written.

Representatives for application for permit no. 34-07571.

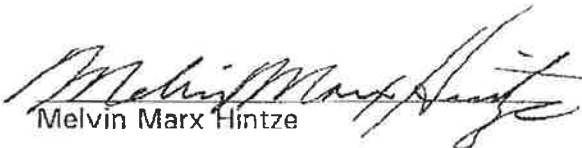

Mitchell D. Sorensen


Seth Beal

Representatives for application for permit no. 34-07573 and protestants against application for permit no. 34-07571.


Dave Nelson


Randy McAfee


Melvin Marx Hintze


Harry Crawford

Agreement -- page 1 of 1



**BIG LOST RIVER RECHARGE
SETTLEMENT AGREEMENT AND STIPULATION**

WHEREAS, applications have been submitted to the Idaho Department of Water Resources to appropriate waters from the Big Lost River and tributaries for purposes of aquifer recharge, in the names of Mitchell Sorensen et al. (No. 34-07571) and Dave Nelson et al. (No. 34-07573) (hereafter, "Applicants"); and

WHEREAS, protests have been filed to said applications under I.C. § 42-203A et seq., by protestants U.S. Dept of Energy, Idaho Rivers United, Big Lost River Waterusers Association, Reva Walker, Charles Huggins, Dennis and Trudy Braswell, and Lester Braswell (hereafter, "Protestants"); and

WHEREAS, Applicants and Protestants all desire to see recharge occur in the Big Lost River valley in a manner which is both effective hydrologically and broadly benefiting all residents and interests in the valley; and

WHEREAS, Water District 34 has already agreed to accept assignment of and hold the recharge permits issued by the Idaho Department of Water Resources (IDWR), and to conduct recharge efforts pursuant to such permits; and

WHEREAS, Applicants and Protestants desire to facilitate successful recharge in 1997 and future years, and to resolve the pending protests amicably and without the need for hearing under the terms of this agreement; and

WHEREAS, Applicants and Protestants agree and stipulate that recharge efforts in the Big Lost River basin, if conducted according to the terms and conditions set forth herein, will serve the local public interest, conserve the water resources of the State of

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EXHIBIT

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Idaho, will not injure existing water rights, and otherwise satisfy the criteria of I.C. § 42-203A;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the undersigned parties do hereby AGREE AND STIPULATE as follows:

1. Upon execution and approval of this Settlement Agreement and Stipulation by all parties hereto, the Protestants agree that all pending protests to the recharge applications shall be, and are hereby, WITHDRAWN by Protestants

2. Upon execution and approval of this Settlement Agreement and Stipulation by all parties hereto, all Applicants and Protestants agree that IDWR may issue permits based upon the above referenced applications pursuant to the provisions of I.C. § 42-203A and other applicable law, for the appropriation of water for recharge purposes in the Big Lost River basin, said permits to be expressly conditioned and limited by the Plan of Operation and other terms and conditions set forth herein.

3. Upon execution and approval of this Settlement Agreement and Stipulation by all parties hereto, Applicants agree that their above-referenced permits shall be, and are hereby, ASSIGNED AND TRANSFERRED to Water District 34 pursuant to Resolution No. 3-3-1997 of the water users of Water District 34 dated March 3, 1997. Executed ASSIGNMENT OF PERMIT documents and filing fees, payable to IDWR, accompany this Agreement and Stipulation to be filed with IDWR at the time of submitting this Agreement and Stipulation to IDWR. The intent of the Applicants being that the permits be assigned to Water District 34 upon their issuance.

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4. Water District 34 shall, at its next regular or special meeting, confirm its acceptance of said recharge permits under the terms and conditions set forth herein. Failure to do so or rejection of any terms and conditions as set forth herein shall render this Settlement Agreement and Stipulation null and void, shall require IDWR to cancel the recharge permits, and shall reinstate the pending applications to the Applicants (without loss of priority date from the applications' filing), and shall reinstate the pending protests by the Protestants.

5. Upon issuance of said recharge permits by IDWR, those permits shall be held and implemented by Water District 34 strictly in accordance with Resolution No. 3-3-1997 of the water users of Water District 34 dated March 3, 1997, and the Plan of Operation, attached hereto and incorporated herein by reference as an integral part of this Settlement Agreement and Stipulation.

6. Following issuance of the recharge permits by IDWR and their acceptance by Water District 34, the terms and conditions of this Stipulation and Settlement Agreement shall be deemed fully satisfied. In the event of violation or failure to adhere to the terms and conditions of the Plan of Operation, the parties to this agreement may invoke or seek any available remedy or relief as provided by law. Any such violation or failure to adhere to the terms and conditions of the Plan of Operation may also be raised by any party and considered by IDWR as grounds for denial of a license.

7 All parties shall bear their own costs and attorneys fees associated with the applications, protests, and administrative proceedings relating thereto. However, upon approval by Water District 34, Applicants are entitled to reimbursement of their

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application fees and other reasonable expenses as provided by Resolution No. 3-3-1997 of the water users of Water District 34 dated March 3, 1997.

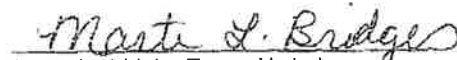
8. In executing this Settlement Agreement and Stipulation, the undersigned parties represent and warrant that they are authorized to make all stipulations, agreements, concessions, promises, and warranties contained herein

9. This Settlement Agreement and Stipulation shall be construed and enforced under the laws of Idaho.

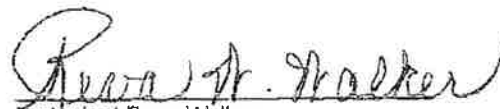
AGREED AND ACCEPTED effective this 21st day of April 1997:

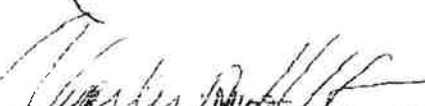

Applicants Mitchell Sorensen, et al


Applicants Dave Neslon, et al.


Protestant Idaho Rivers United


Protestant Big Lost River Water Users Ass'n


Protestant Reva Walker


Protestant Charles & Karen Huggins

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Protestant Dennis & Trudy Braswell

Protestant Lester Braswell

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PLAN OF OPERATION
BASIN 34 RECHARGE
April, 1997

Introduction

This Plan of Operation is intended to implement the recharge effort in Basin 34 to accomplish the objectives of the water users of Water District 34 and the parties to the Settlement Agreement and Stipulation executed herewith. Recharge efforts utilizing water rights nos. 34-07571 and 34-07573 (recharge water rights hereinafter) shall be conducted in accordance with this Plan of Operation. Under this Plan of Operation the recharge water rights are to be used without regard for the relative priority between the two water right filings in a manner to fully and efficiently use the available water supplies and provide benefit throughout the basin.

The objectives of this Plan of Operation are to benefit all lands in the basin from flood water supplies that would otherwise exit the basin by maintaining reasonable river flows from the head of the valley to the Arco gaging station and the controlled diversion of otherwise unappropriated water into selected recharge sites. The expected basin wide project benefits are anticipated to be the following:

- 1) greater usage of flood water supplies.
- 2) flood control/stream bank protection.
- 3) recharge to natural springs and aquifer levels.
- 4) enhancement to fish and wildlife habitat and aesthetic values.
- 5) reduce damage caused by sub-water adjacent to river.
- 6) extended periods of river flows.
- 7) improved conveyance of diverted water supplies.
- 8) aquifer replacement of ground water supplies.
- 9) mitigation for senior surface water rights.
- 10) demonstration of community cooperation.
- 11) reduce or eliminate the need to curtail existing ground water rights.
- 12) maintain ground water levels for domestic wells.
- 13) develop greater understanding of ground and surface water hydrology in the basin.

Permit Terms and Conditions

The following terms and conditions relate to elements of the recharge water rights and are sought to be incorporated into the permits issued by IDWR for the recharge water rights. These terms and conditions remain integral parts of this Plan of Operation whether or not incorporated into the permits by IDWR.



Recharge During the Non-Irrigation Season

For purposes of this Plan of Operation, the non-irrigation season is the period of the year when surface water is not being diverted for irrigation purposes from the source of water sought to be used for recharge. The non-irrigation season, for purposes of this plan, may differ from one portion of the basin to another in any year as well as differing from year to year.

The diversion of water for recharge may begin from tributaries to the Big Lost River during the non-irrigation season at any time that water is available for recharge and diversion facilities are available and capable of diverting and recharging the diverted water. Care must be taken to avoid ice damage to diversion facilities and to avoid flood threats that could result from icing conditions.

No diversion of water from the Big Lost River upstream from Mackay Reservoir can occur which would interfere with filling the storage rights for the reservoir. Diversions for recharge upstream from Mackay Reservoir should only be made after consultation and concurrence by the Directors of the Big Lost River Irrigation District and when diversion facilities are available.

Diversion of water from the Big Lost River downstream from Mackay Reservoir may occur when the conditions of stream flow described herein have been satisfied and diversion facilities are available. During the non-irrigation season water diverted into the irrigation canals and "lost" from seepage from those canals is a viable form of ground water recharge. This recharge benefits both ground water users by raising the level of the aquifer and surface water users by reducing the losses that will occur from the canals when irrigation deliveries begin.

Recharge During the Irrigation Season

For the purpose of this Plan of Operation the irrigation season is the period during each year when surface water is being diverted for irrigation purposes from the source of water sought to be used for recharge. The irrigation season, for purposes of this plan, may differ from one portion of the basin to another in any year as well as differing from year to year.

Recharge during the irrigation season will generally follow the same procedures as recharge during the non-irrigation season. All senior rights being called for must be filled prior to the use of water for recharge. Water rights for purposes other than recharge will not be diverted or delivered solely for purposes of recharge.

Requirements and Guidelines for Recharge

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. Among the purposes of this recharge plan is to retain water within the basin that would otherwise leave the basin downstream from the Arco gage as "flood flows." While retaining the water as high in the basin as possible may produce some benefit by extending the time the water may remain in the basin that added benefit does not off-set the value of recharging in the immediate vicinity of the stream channel itself to help maintain the integrity of the stream channel. 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.

For the Big Lost River itself downstream from Mackay Dam, diversion for recharge downstream from Mackay Dam will not occur unless the flow at the Arco gage is 60 cfs or more, measured as a three consecutive day average. The 60 cfs at the Arco gage is for purposes of this Plan of Operation only and is not and cannot be construed as a minimum flow or minimum flow water right under any theory of law.

In the event of a brief but intense weather event which is anticipated to produce flood flows for a period of three days or less, the Recharge Committee may call for and the Watermaster may deliver water for recharge purposes even if the flows at the Arco gage are below 60 cfs so long as the flow at the 2-B Gage is 300 cfs, or more, in excess of the non-recharge water deliveries occurring from the Big Lost River downstream from Mackay Dam.

Delivery of Water for Recharge

Delivery of water pursuant to the recharge water rights under this Plan of Operation is limited to the use of water for recharge purposes only and is subject to all prior water rights including, but not limited to, irrigation, stock water and storage. The Watermaster may, however, deliver water for recharge prior to the filling of all storage rights when the owner(s) of the stored water concurs that the reasonably anticipated runoff is sufficient to fill all storage rights and provide water for recharge.

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Recharge Locations

The place of use for recharge under this Plan of Operation shall be within the following described area:

Twp 04N Rge 23E, 24E & 26E B.M.
Twp 05N Rge 24E, 25E & 26E B.M.
Twp 06N Rge 24E, 25E & 26E B.M.
Twp 07N Rge 23E, 24E, 25E & 26E B.M.
Twp 08N Rge 21E, 22E & 23E B.M.
Twp 09N Rge 21E & 22E B.M.

Recharge locations within the above described places of use shall include all locations at which recharge has been undertaken in 1995-96, including, but not limited to, Antelope Creek through the UC Canal, and Alder and Pass Creeks through private ditches, Parsons Creek, Spring Creek, Skelton Slew, and the Nielsen, Chilly, Longhurst, Ingram, Howoll, Kent, Bartlett Bitton, Anderson, Thalman Hunter, Bradshaw, Burnett, Beck, Darlington, Sharp, Swager, McGowan, Vaught & Harris, 3 & 1, Moore, B&J, Sutter, Arco, Eastside and UC canals and ditches and turnouts from those canals and ditches into a number of private ditches, gravel pits and sinks.

As permits, the recharge water rights shall also show, but are not limited to, places of use for potential recharge locations including the Darlington bypass, the Lower Burnett Ditch, Congdon Springs area, and the Leslie gravel pit. In addition, the Recharge Committee may identify other sites and facilities which can be used for recharge of ground water within the Big Lost River basin.

Excess Ground Water

In the event ground water levels become too high while recharge is occurring, the Recharge Committee will consult with the Director of the Department of Water Resources to determine if or where recharge can continue at that time in Basin 34. This consultation will occur within 24 hours of any notification that ground water levels are too high as a result of recharge. The Recharge Committee may, in its own discretion, request the Watermaster to alter recharge diversions to avoid adding additional recharge water to areas where the ground water has become too high. The Director of the Department of Water Resources may, in his sole discretion, instruct the Watermaster to alter recharge diversions to avoid adding additional recharge water to areas where the ground water has become too high. If the Watermaster or the Director of the Department of Water Resources becomes aware of any imminent flood danger caused by recharge diversions the Watermaster may take such action as is reasonable and necessary to avoid or reduce any flooding caused by recharge diversions.

Other Terms and Conditions

The following terms and conditions are not anticipated to be included by IDWR in the recharge water permits themselves, but nevertheless are integral parts of this Plan of Operation and the recharge effort undertaken pursuant to the Plan of Operation.

Control of recharge water rights

The recharge water rights shall be held and exercised by Water District 34 and are subject to the control of the Watermaster of Water District 34 (Watermaster hereinafter) for water distribution purposes pursuant to the Water Distribution Rules for Water District 34, the terms and conditions of this Plan of Operation, and all applicable laws and regulations. The Watermaster shall be guided and informed by the Recharge Committee, as set forth herein, regarding the control of the recharge water rights.

Delivery of recharge water shall be made to benefit the Big Lost River basin as a whole. As weather and water conditions change in the Big Lost River basin and as new recharge sites are developed, the Recharge Committee shall be guided by the goal to fully and efficiently use the available water supplies to provide benefit throughout the basin in the spirit of community cooperation and consensus.

Recharge Committee

Calls for delivery of recharge water will be made only by the Recharge Committee under the conditions and guidelines set forth herein. Calls for and delivery of recharge water will be according to this Plan of Operation and other applicable laws and regulations. Calls for delivery of recharge water by the Recharge Committee will be consistent with the intent of the water users of Water District 34 to provide benefits throughout the basin.

The Recharge Committee will have principal responsibility for selecting recharge sites and locations, dates for recharge efforts in any particular year, and for working with other entities (BLRID, BLM, land owners, etc.) to obtain the necessary permits and authorizations for use of recharge sites. The Recharge Committee may make recommendations to Water District 34 and the Watermaster about appropriate arrangements for obtaining authorization for use of recharge sites. The Recharge Committee is urged to seek technical assistance, as required, from local, state, or federal natural resource agencies.

Since current irrigation diversion and delivery facilities may not have enough capacity to meet irrigation demands and divert water for recharge the Recharge Committee should begin immediately to identify recharge sites and provide facilities that can be used for recharge during the irrigation season. Possible recharge sites, in addition to existing irrigation canals, are abandoned irrigation canals, gravel pits and other as yet unidentified sites. Sites and facilities that can be used to divert and recharge "flood flows" that normally occur after the beginning of the irrigation season are essential to a successful recharge effort. The Recharge Committee should have identified additional recharge sites and have in place facilities at sites in addition to those identified above prior to submittal of proof of beneficial use to IDWR.

Members of the Recharge Committee will be appointed, and may be removed for good cause established by any interested party, by the Water District 34 Advisory Committee, with the input of the parties to the Settlement Agreement and Stipulation and the Watermaster. The Recharge Committee shall consist of twelve (12) members as follows:

- (a) five (5) members who are surface water users of Water District 34, one (1) of whom shall be selected from each of the following areas:
 - (i) above Mackay Reservoir,
 - (ii) Big Lost River from Mackay Reservoir to above the Moore Diversion,
 - (iii) Big Lost River from Moore Diversion to above the Arco Diversion,
 - (iv) Big Lost River from Arco Diversion and downstream, and
 - (v) from the Antelope Creek drainage.
- (b) four (4) members who are ground water users of Water District 34, one (1) of whom shall be selected from each geographic area generally described by items (a)(i) through (a)(iv) above.
- (c) a member position available to be selected from a list of names provided by the Cities of Butte City, Arco, Moore and Mackay in a manner agreed to by the cities.
- (d) a member who is a resident of two (2) years or more or a land owner in the Big Lost River basin, but not a water user of Water District 34, to be selected from a list of names suggested by others having an interest in the basin who are not water users of Water District 34.
- (e) the Watermaster.

The Advisory Committee shall act promptly upon a complaint by any interested party that one or more members of the Recharge Committee should be removed for good cause. Good cause for removal of a committee member includes, but is not limited to, failure to diligently attend to the duties of the Recharge Committee, and failure to act in accordance with the goals or terms and conditions of this Plan of Operation.

Monitoring, Evaluation, and Accounting for Recharge

Recharge diversions will be accounted for by the Watermaster on an annual basis in a report to be submitted to the Recharge Committee and the Director of the Department of Water Resources. Only those flows diverted under the authority of the recharge water rights are to be accounted for as recharge. Canal seepage that occurs during the normal delivery of water pursuant to non-recharge water rights will not be counted as recharge.

Monitoring and study of the effects of recharge is a desirable part of this Plan or Operation. The Recharge Committee is encouraged to undertake a study, including monitoring and evaluation, to evaluate the effect of ground water recharge in the basin. The Recharge Committee is encouraged to seek the assistance and cooperation of local, state and federal agencies to complete the study.

Recharge and Mitigation

It is beyond the scope of this Plan of Operation to propose a specific mitigation plan that utilizes the recharge that will occur under this plan. Nothing in this plan, however, prevents any ground water user from proposing a mitigation plan to the Director of the Idaho Department of Water Resources, pursuant to Rule 50.04.c.iii or Rule 50.04.e of the Water Distribution Rules - Water District 34, IDAPA 37 Title 03 Chapter 12.

Costs

Water District 34 will be responsible for all costs associated with the recharge effort pursuant to this Plan of Operation including reimbursement of the application fees and other reasonable costs as provided by Resolution No. 3-3-1997 of the water users of Water District 34 dated March 3, 1997, and recharge facilities development and maintenance. Water District 34 may seek to defray these costs by seeking contributions from the beneficiaries of the recharge effort or by other means.

Plan of Operation - page 7

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FEB 11 1998



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177

Website: idwr.idaho.gov • Email: easterninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

January 17, 2020

Notice of Application for Temporary Approval of Water Use TP-34-26 in the Name of Water District 34

On December 16, 2019, Water District 34 filed Application for Temporary Approval of Water Use TP-34-26, proposing to divert a total of 40 cfs from the Big Lost River at two locations in Section 14, T06N, R25E for ground water recharge. A copy of Application TP-34-26 is enclosed with this notice.

Water District 34 currently holds Permits 34-7571 and 34-7573 which, in combination, authorize the diversion of 800 cfs from the Big Lost River and some of its tributaries for ground water recharge at various locations throughout the Big Lost River basin. The Department issued Permits 34-7571 and 34-7573 in 1998 after protests against the underlying applications were withdrawn. Some of the protests were withdrawn without condition. Others were withdrawn through an Agreement (dated June 5, 1995). Still others were withdrawn through a Settlement Agreement and Stipulation (dated April 21, 1997). A copy of the 1995 Agreement and the 1997 Settlement Agreement and Stipulation are enclosed with this notice. The entire files for Permits 34-7571 and 34-7573 are available online at:

<https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>

Both of the permits include the following condition of approval:

Approval of this right is subject to the Plan of Operation and Agreement and Stipulation dated April 21, 1997.

Water District 34 adopted a Recharge Plan of Operation in April 1997 which contains the following provision:

For the Big Lost River itself downstream from Mackay Dam, diversion for recharge downstream from Mackay Dam will not occur unless the flow at the Arco gage is 60 cfs or more measured as a three consecutive day average. The 60 cfs at the Arco gage is for purposes of this Plan of Operation only and is not and cannot be construed as a minimum flow or minimum flow water right under any theory of law.



Application for Temporary Approval of Water Use TP-34-26 does not propose to be subject to the 1997 Recharge Plan of Operation or its requirement that diversion for ground water recharge not occur unless 60 cfs of water is flowing in the Big Lost River at the Arco gage.

Idaho Code § 42-202A states that the Department is not required to publish notice of an application for temporary approval of water use, but may provide notice of such an application as the Department deems appropriate. The Department has determined that all of the protestants to Applications 34-7571 and 34-7573 should be notified of the current recharge proposal. You are receiving this notice because you were a protestant to Application 34-7571 or 34-7573.

Idaho Code § 42-202A governs the review of applications for temporary approval. It states that a temporary approval of water use may be approved if the Department determines that "other sources of water are not available," that the approval is in the public interest, and that the approval "will not injure public values associated with the water source or any other water right." Idaho Code § 42-202A does not establish a process to protest an application for temporary approval of water use. Persons wishing to raise objections or concerns related to the review criteria may do so in the form of a comment letter. If you have concerns about the proposed temporary water use, please deliver a comment letter to the Department on or before February 18, 2020. If you do not comment on the proposed temporary water use, the Department will assume that you have no objections to or concerns with the proposed temporary approval of water use. Please feel free to contact me if you have any questions.

Sincerely,

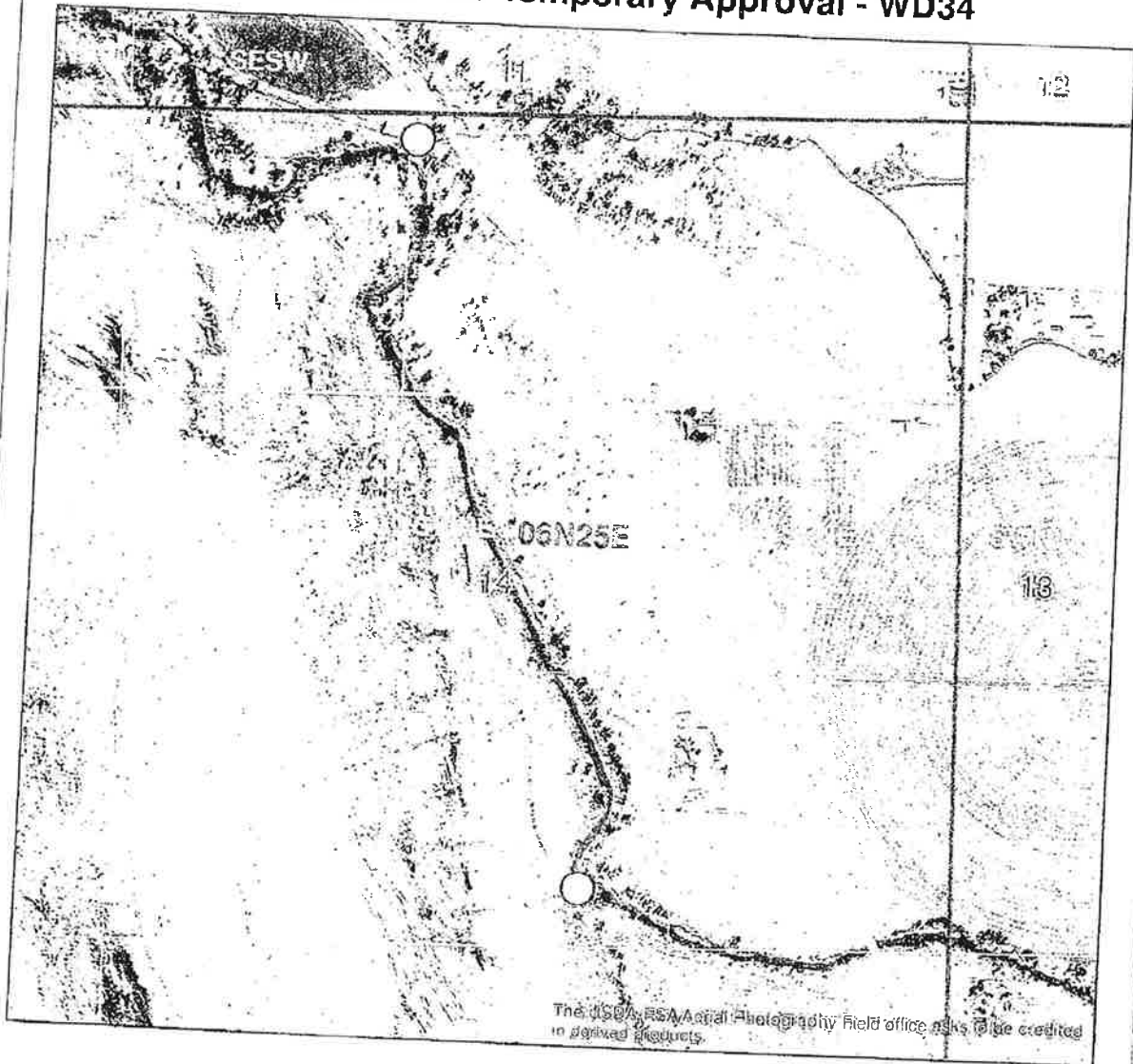


James Cefalo
Regional Manager
208-525-7161

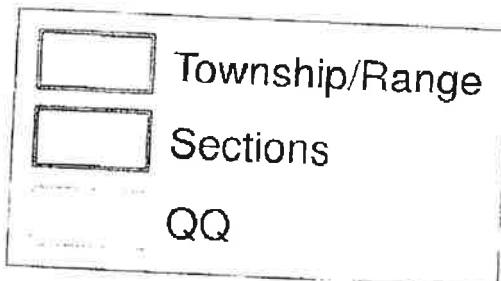
**Application for Temporary Approval of Water User
Water District 34**

The district would like to divert water for ground water recharge at two locations during the winter months. The district holds Permits 34-7571 and 34-7573, which are limited by settlement agreement to only be available when the flow of the Big Lost River at the Arco gage is 60 cfs. During the winter months, there is usually not enough flow in the river to meet the 60 cfs threshold, even if the entire river is left in the river channel. We would like this temporary approval to be treated as a futile call diversion, to authorize ground water recharge when the 60 cfs threshold at the Arco gage could not be achieved, even with the full flow of the river below Mackay Dam. The district intends to keep the river live to Arco and would be open to a condition requiring that enough flow be left in the river to maintain a liver river channel to Arco.

**Proposed Points of Diversion
Application for Temporary Approval - WD34**



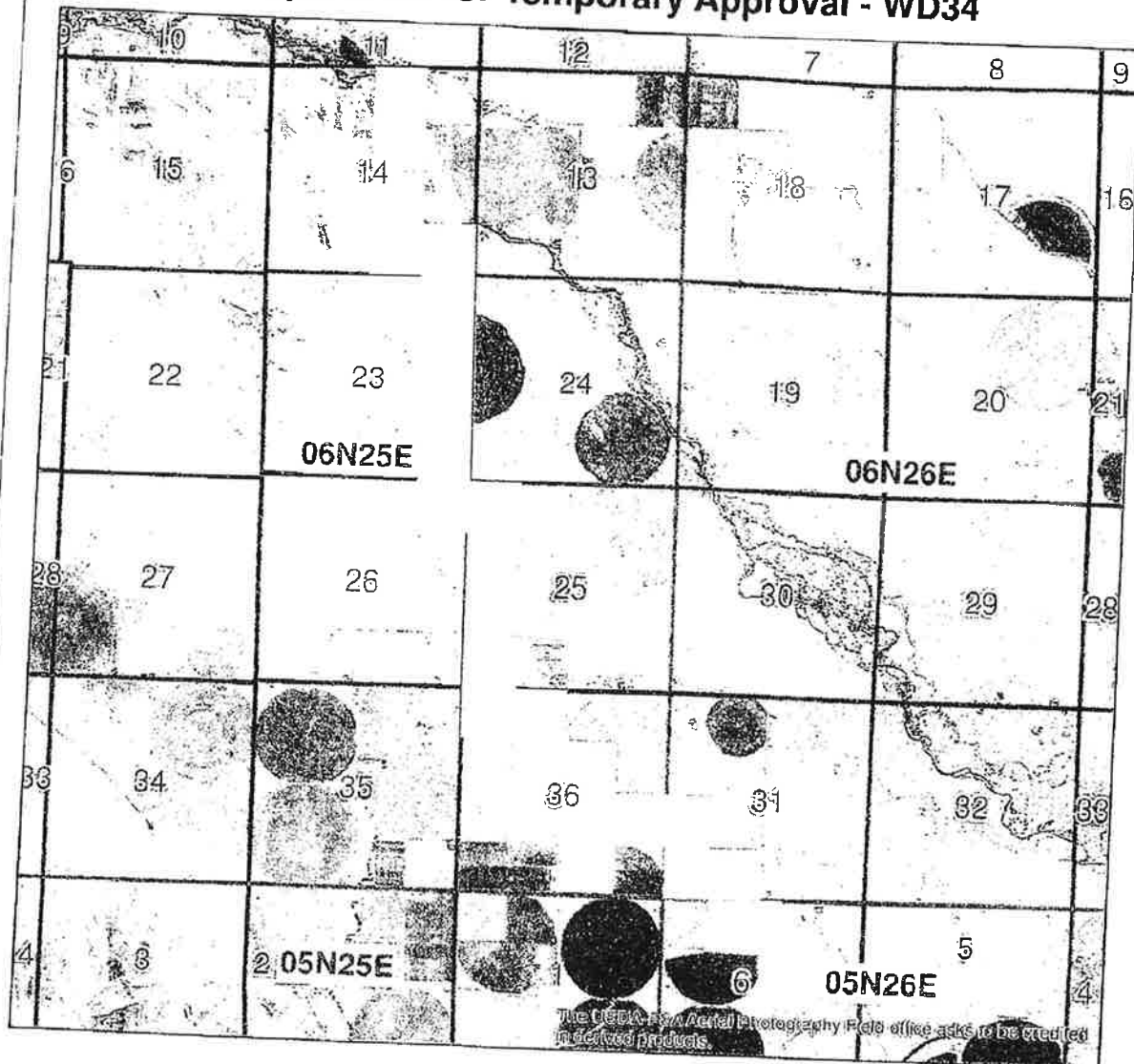
2013 Aerial Photo



0 750 1,500 Feet



Proposed Recharge Place of Use Application for Temporary Approval - WD34



2013 Aerial Photo

WD34TempApp

Township/Range

Sections

0 4,000 8,000 Feet



Form 202A 04/17

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESID No. TP-34-26

RECEIVED

DEC 16 2019

APPLICATION FOR TEMPORARY APPROVAL OF WATER USE

For a use not intended to become an established water right and not to exceed one (1) year in duration in accordance with Idaho Code § 42-202A.

Department of Water Resources
Eastern RegionName of applicant Water District 34Phone (208) 588-3137Mailing address PO Box 53City MackayState IDZip 83251Email waterdistrict34@atcn.net1. Source of water Big Lost Rivertributary to Sinks2. Location of point(s) of diversion. If more than two, attach a Point of Diversion/Place of Use Supplement ☐

TWP	RGE	SEC	GOVT LOT	1/4	1/4	1/4	County	Source	Local name or tag #
08N	25E	14			NW	SE	Custer	Big Lost River	Blaine/3in1 Heading
06N	25E				NW	NE	Custer	Big Lost River	Beck/McGowan

3. Location of place of use. If more rows are needed, attach a Point of Diversion/Place of Use Supplement ☐

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
See	Map																		

4. Proposed use of water:

- a. ☐ Prevention of flood damage ☒ Ground water recharge ☐ Ground water or surface water remediation
☐ Other (Limited to a diverted volume of 5 acre-feet.) Describe: _____

b. Attach a detailed description of how the proposal will accomplish the intended objective, such as prevention of flood damage.

5. Amount of water. Complete all three:

a. Maximum rate of diversion: 40 cfs; or _____ gpm.b. Maximum daily volume: 79.2 AF; or _____ gallons.c. Maximum volume over the duration of the request: 9,500 AF; or _____ gallons.6. Duration of diversion: from December 1, 2019 (month-day) to April 1, 2020 (month-day).7. Describe proposed diverting works: Lockable headgates and measuring devices.8. a. Who owns the property at the requested point of diversion? WD 34 and/or Big Lost River Irrigation Districtb. Who owns the facilities that will convey water to the place of use? WD 34 and/or Big Lost River Irrigation Districtc. Who owns the land to be irrigated or place of use? WD 34 and/or Big Lost River Irrigation Districtd. If any of the items above is owned by a person or entity other than the applicant, describe the arrangement allowing access and attach written evidence of the arrangement. Written agreement with BLRID to access canals and recharge sites.

9. Attach an 8 1/2" x 11" map identifying the water source, point(s) of diversion, place(s) of use and conveyance system.

I hereby acknowledge that I assume all risk of the diversion and use of the water under this approval. I certify this is a temporary use and is not intended to become an established water right.

Signature of Applicant [Signature]Title, if any Water MasterDate 12-16-19

Received by _____

\$50.00 fee received by CH

Date _____

ED45380

Time _____

Date 10/9/19

Date _____

Watermaster comments received? _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**APPLICATION FOR TEMPORARY APPROVAL OF WATER USE**

For a use not intended to become an established water right and not to exceed one (1) year in duration in accordance with Idaho Code § 42-202A.

Name of applicant Water District 34Mailing address PO Box 53Phone (208) 588-3137State IDZip 83251City MackayEmail waterdistrict34@atcnet.net1. Source of water Big Lost Rivertributary to Sinks2. Location of point(s) of diversion. If more than two, attach a Point of Diversion/Place of Use Supplement. ☐

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06N	25E				NW	NE	Custer	Big Lost River	Beck/McGowan

3. Location of place of use. If more rows are needed, attach a Point of Diversion/Place of Use Supplement. ☐

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TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
See	Map																		

4. Proposed use of point

4. Proposed use of water:

- a. ☐ Prevention of flood damage ☒ Ground water recharge ☐ Ground water or surface water remediation
☐ Other (Limited to a diverted volume of 5 acre-feet.) Describe: _____

b. Attach a detailed description of how the proposal will accomplish the intended objective, such as prevention of flood damage.

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8. a. Who owns the property at the requested point of diversion? WD 34 and/or Big Lost River Irrigation District
b. Who owns the facilities that will convey water to the place of use? WD 34 and/or Big Lost River Irrigation District
c. Who owns the land to be irrigated or place of use? WD 34 and/or Big Lost Irrigation District
d. If any of the items above is owned by a person or entity other than the applicant, describe the arrangement allowing access and attach written evidence of the arrangement. Written agreement with BLRID to access canals and recharge sites.

9. Attach an 8 1/2" x 11" map identifying the water source, point(s) of diversion, place(s) of use and conveyance system.

I hereby acknowledge that I assume all risk of the diversion and use of the water under this approval. I certify this is a temporary use and is not intended to become an established water right.

Signature of Applicant _____

Title, if any _____

Date _____

Received by _____

Date _____

Time _____

\$50.00 fee receipted by CH# E045380Date 10/9/19

Watermaster comments received? _____

Date _____

Form 202A 04/17

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESID No. TP-34-26

RECEIVED

APPLICATION FOR TEMPORARY APPROVAL OF WATER USE

For a use not intended to become an established water right and not to exceed one (1) year in duration in accordance with Idaho Code § 42-202A

Name of applicant Water District 34Mailing address PO Box 53Phone (208) 588-3137

State ID _____

Zip 83251City MackayEmail waterdistrict34@atcn.net1. Source of water Big Lost Rivertributary to Sinks2. Location of point(s) of diversion. If more than two, attach a Point of Diversion/Place of Use Supplement. ☐

TWP	RGE	SEC	GOVT LOT	1/4	1/4	1/4	County	Source	Local name or tag #
06N	25E	14			NW	SE	Custer	Big Lost River	Blaine/3in1 Heading
06N	25E				NW	NE	Custer	Big Lost River	Beck/McGowan

3. Location of place of use. If more rows are needed, attach a Point of Diversion/Place of Use Supplement. ☐

If more rows are needed, attach a Point of Diversion/Place of Use Supplement. ☐																			
TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
See	Map																		

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☐ Other (Limited to a diverted volume of 5 acre-feet.) Describe: _____

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9. Attach an 8 1/2" x 11" map identifying the water source, point(s) of diversion, place(s) of use and conveyance system.

I hereby acknowledge that I assume all risk of the diversion and use of the water under this approval. I certify this is a temporary use and is not intended to become an established water right.

Signature of Applicant [Signature]

Water Master

Title, if any

Date 12-16-19

Received by _____

\$50.00 fee received by CH

Date _____

E045380

Time _____

Date 10/9/19

Date _____

Watermaster comments received? _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls ID 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177
Website: idwr.idaho.gov • Email: easterninfo@idwr.idaho.gov

GARY SPACKMAN
Director

BRAD LITTLE
Governor

March 2, 2020

Water District 34
PO Box 53
Mackay, ID 83251

RE: Application for Temporary Approval of Water Use TP-34-26

Dear Applicant:

This letter is meant to notify you that Application for Temporary Approval of Water Use TP-34-26 has been denied. Water District 34 currently holds two water right permits which, in combination, authorize up to 800 cfs of ground water recharge at various locations in Basin 34. Both of these existing permits were, prior to their approval, contested applications before the Department. The contested cases were ultimately resolved without an administrative hearing. Both permits refer to a Settlement Agreement and Stipulation dated April 21, 1997 and a Plan of Operation, which governs recharge activities in Basin 34. The ground water recharge use proposed in Application TP-34-26 is not consistent with the current Plan of Operation for Basin 34. Because the proposed recharge use was a departure from the historical recharge activities occurring under the two existing permits, the Department felt it was necessary to provide notice of Application TP-34-26 to the parties to the original contested cases.

On January 17, 2020, the Department sent notice of Application TP-34-26 to thirteen entities or individuals. The notice advised the recipients to provide comments to the Department on or before February 18, 2020 if they were opposed to the recharge use proposed in Application TP-34-26. Of the thirteen entities or individuals receiving the notice, only four provided comments to the Department. In addition, the Department received comments from other individuals who were not involved in the original contested cases for the two existing permits. A summary of the comments is enclosed.

Idaho Code § 42-202A governs the application for and review of temporary approvals and states that the Department may deny a temporary approval if the Department determines that the proposed use would "injure public values associated with the water source or any other water right." The comments provided to the Department show that there are public interest concerns related to the proposed recharge use. In addition, as of today, the snowpack for Basin 34 is only 62 percent of normal. Therefore, the flow in the Big Lost River will likely be below average this year, meaning the non-irrigation season might be the only time there is flow in the Big Lost River channel between Moore and Arco.



Ideally, Water District 34 would amend its Plan of Operation to allow for the proposed recharge use under its existing recharge rights, while still addressing the concerns of people in the lower valley. Amending the Plan of Operation may take some coordination with the parties to the previous contested cases, particularly those who provided comments about Application TP-34-26. The Department encourages Water District 34 to contact the individuals and entities providing comments and discuss a possible amendment of the Plan of Operation. Please contact me if you would like a representative from the Department to participate in those discussions.

Sincerely,



James Cefalo
(208) 525-7161

Encl: Summary of Comments

Cc: Butte County Commissioners
James White, IDFG
Joel Andersen, BLRWUA
Harvey Walker
Matea McCray / Karon Huggins
Judy Stedtfeld

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources ("Department") has examined this application for temporary approval to use water under the provisions of Idaho Code § 42-202A and has determined that:

- ☒ A. The application for temporary approval should be denied because of public interest concerns about reducing water flowing in river channel near Arco and because of low snow pack and limited water supplies in 2020
- ☐ B. The application for temporary approval should be approved, since
1. The temporary approval can be properly administered.
 2. Other water sources are not readily available.
 3. The approval is in the public interest.
 4. The approval will not injure known public values associated with the water source or any known water rights.
 5. If the temporary approval is within a water district, the Department has sought and considered the recommendations of the watermaster.

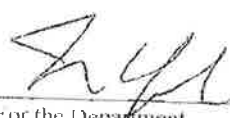
This application is therefore hereby:

☒ A. DENIED

☐ B. APPROVED, subject to the following conditions:

1. Diversion and use of water under this approval is subject to all valid existing water rights.
2. The applicant assumes all risk of the use of the water under this approval.
3. This approval authorizes a maximum diversion volume of _____ AF and a maximum diversion rate of _____ cfs.
4. This approval does not grant a right-of-way across the land of another.
5. The Department may cancel or reduce the rate of flow or volume authorized by this approval. For example, the Department may cancel or reduce this approval if it concludes the water use is injuring other water rights or adversely affecting fish, wildlife or other public values.
6. The applicant shall not divert water when downstream minimum flow water rights are not being satisfied.
7. This approval does not create a continuing right to use water.
8. A temporary approval for ground water recharge or prevention of flood damage shall be an opportunistic use of surplus water and shall not interfere with the filling of surface water reservoirs.
9. For a temporary approval authorizing ground water recharge or ground water or surface water remediation, the applicant shall measure and record the weekly quantity of water diverted and report the diversion data to the Department upon request.
10. This temporary approval is not an authorization for the described water use to be used as mitigation or credit for any other purpose.
11. Other: _____
12. This approval expires on _____

Signed this 2nd day of March, 2020


For the Department

WATER DISTRICT No. 34 Rule 40 WATER DELIVERY CALL

WATER SEASON 2020

Rule 040.05 Notice to Initiate Delivery. Water users must initiate delivery of their water rights(s) by notifying the watermaster that they are ready to put water to beneficial use.

Notice given by: Hand delivered ____ Mail ____ E-mail ____ Phone ____ Verbal ____

Required Information:

Water User _____ Heading _____

Deputy _____

Turn On Amount _____ Change Amount to _____ Total Turn Off _____
Date _____ Date _____ Date _____

Optional Information: (Check all appropriate boxes and fill in pertinent blanks if needed)

- ___ Call for all Natural Flow Rights whenever available (Rule 040.01).
- ___ Call for only those Natural Flow Rights listed below (Rule 040.01).
- ___ Call for Rotation Credit (Rule 040.02) Impoundment _____ Release Rate _____
- ___ Call for Additional Flows (Rule 040.06)
- ___ Call for Mitigation Supplies (Rule 050.04)

<u>Right No.</u>	<u>Priority</u>	<u>Div. Rate</u>	<u>Canal Heading</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Calls for Storage Allocations (Big Lost River Irrigation District patrons only). Turn On Amounts in excess of available Natural Flows will be satisfied by using Storage Allocations.

Every Delivery Call must be forwarded to and recorded by the watermaster the same day of receipt.

Water deliveries and cessations must be called for forty-eight hours in advance.

Water delivered prior to the forty-eight hours may be used by the water user.

Please use a separate card for each turnout.



BUTTE COUNTY COMMISSIONERS

COURTHOUSE
P.O. BOX 737
205 W. Grand Avenue
ARCO, IDAHO 83213
(208) 527-3021
FAX (208) 527-3295

BRIAN HARRELL
ROSE BEVERLY
WES COLLINS

Butte County Board of Commissioners
P.O. Box 737
Arco, ID 83213
208-527-3021
butteclerk@atcnet.net
Thursday, February 13, 2020

State of Idaho Department of Water Resources
Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718

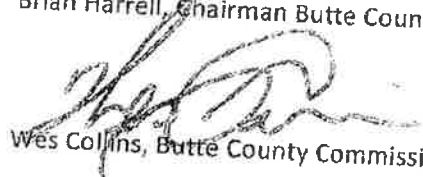
RE: Notice of Application for Temporary Approval of Water Use TP-34-26
In the Name of Water District #34

Dear State of Idaho Department of Water Resources:

The Butte County Board of Commissioners are issuing this letter of concern as they feel that it imperative that the Big Lost River stay alive and continue to run to the Huggins Bridge. We feel that this is currently being accomplished.

Sincerely,


Brian Harrell, Chairman Butte County Board of Commissioners


Wes Collins, Butte County Commissioner

Application for Temporary Water Use TP-34-26
Water District 34
Summary of Comments Received prior to February 18, 2020

Phone Comments

Bill Walker for Walker Family Trust
Agrees that less water should be sent to the desert. Is mainly concerned that the Spring Creek channel be rehabilitated so it can be used for ground water recharge. Explained that Reva Walker fought for years, unsuccessfully, to get water back into the Spring Creek channel. Is not opposed to Application TP-34-26, but wants the WD34 Recharge Committee to initiate a project to make the Spring Creek channel an active waterway again. Walker would like to meet with the WD34 Recharge Committee to discuss future projects.

Jim Childers (Not original protestant)
208-589-4110

Is opposed to taking any water out of the river for recharge.

Howard Wood (Not original protestant)
208-821-8583

Owens two springs which are totally dependent on flows in the Big Lost River near Arco. Property is in NWSW of Section 6. Neighbor to Harvey Walker. Opposed to any water diverted from the Big Lost River for recharge.

Barry Dunn (Not original protestant)
208-351-5065

Wants a minimum stream flow in the Big Lost River below Arco. Believes more emphasis should be put on the aesthetic values of flow in the river. Not opposed to recharge as long as the river is kept alive.

Tana Beverly (Not original protestant)
208-716-4327

Concerned about flow in the Big Lost River near Arco. Many people in the Arco area have been forced to re-drill domestic wells. Opposed to any more water being taken out of the river for recharge by the upper valley.

Judy Stedtfeld and John Stedtfeld (Not original protestants)
208-681-4824

Opposed to recharge. Had to re-drill domestic well because of declining aquifer levels. Believes the aquifer problems are directly tied to no water in the river near Arco. Opposed to any more water being taken out of the river for recharge.

Written Comments

Attached



IDAHO DEPARTMENT OF FISH AND GAME
SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204

Brad Little / Governor
Ed Schriever / Director

February 13, 2020

James Cefalo
Regional Manager
Idaho Department of Water Resources
900 N. Skyline Drive; Suite A
Idaho Falls, ID 83402

RE: Notice of Application for Temporary Approval of Water Use TP-34-26 in the Name of Water District 34

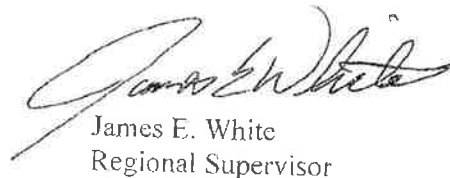
Dear Mr. Cefalo:

The Idaho Department of Fish and Game (IDFG) has reviewed the Application for Temporary Approval of Water Use TP-34-26 as well as the Recharge Plan of Operation and Settlement Agreement with Stipulation. The Applicant has requested that the 60CFS at the Arco gauge be treated as a "futile call diversion" during this temporary approval. Additionally, the Applicant has stated that they would be open to a condition requiring enough flow be left in the river to "maintain a living river channel".

IDFG would like to request a meeting with the Applicant and IDWR to better understand the proposal. Based on the information provided, it is difficult to fully understand and anticipate the biological realities associated with treating water rights 34-7571 and 34-7573 as futile call diversions throughout the entire system. IDFG would like to better understand the project to provide IDWR and the Applicant with the relevant information about potential impacts to fish and wildlife in and around the Big Lost River.

IDFG appreciates the opportunity to review and comments on this Application for Temporary Approval of Water Use. Please contact Jacob Gray (jacob.gray@idfg.idaho.gov) to set up a meeting or to request additional information.

Sincerely,



James E. White
Regional Supervisor

jmg/jew/jmh

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-232-4703 • Fax: 208-233-6430 • Idaho Relay (TDD) Service: 1-800-377-3529 • <https://idfg.idaho.gov>

Idaho Department of Water Resources

Notice of Application for Temporary Approval of Water Use TP-34-26 In the Name of Water District 34

To: James Cefalo Regional Manager

February 13, 2020

From: Joel Andersen Big Lost River Water Users Association

Subject: Comment Letter for Winter Recharge

Big Lost River Water Users Association is apposed to Winter Recharge on the Big Lost unless there is River flows to the Huggins/Braswell bridge. In recent years higher than normal snowpack has helped in recharging the lower Valley. However, even with higher snow pack and the River flowing during certain times and months, not all water rights have been restored. Several Spring rights with earlier priority than ground water diversions are still suffering for a lack of flows in the River above and below Arco. Big Lost River Recharge Settlement Agreement and Stipulation states that the purpose is to "hydrologically and broadly benefiting all residents and interests in the Valley". A study was conducted last year by INL and The Department of Water Resources. We are unaware of the results and findings of this study. Until that study or additional studies support sinking water in Custer County will benefit the situation above and below Arco we oppose this Winter Recharge.

Sincerely,

Joel Andersen, Big Lost River Water Users Association



Harvey Walker
2338 N. 2930 W.
Arco, Id. 83213
208-520-7880

State of Idaho Department of Water Resources
Eastern Region
900 N. Skyline Dr. Suite A
Idaho Falls, Idaho 83402-1718

FAX 525 2147

Attn. James Cefalo

Re: Application for Temporary Approval of Water Use
TP-34-26 in the Name of Water District #34

Dear State of Idaho Department of Water Resources

The Big Lost River should stay alive and continue to
run to the Huggins Bridge, in the winter months. The
plan of operation needs to be changed.

Sincerely,

Harvey Walker
Harvey Walker

Idaho Dept of Water Resources
900 N. Skyline Drive Suite A
Idaho Falls, Idaho 83402

Date: February 9, 2020

Subject: Objection to Application TP-34-26 From Matea McCray and Karon Huggins

The 60 CFS of water passing the Arco Gauge in the BLR recharges the groundwater (per the referenced settlement agreement) for all of us on the lower end of the river, including the entire city of Arco. We therefore oppose IDWR granting this application.

Thank You,

Matea McCray
Karon Huggins

Matea McCray
3470 Cobblestone Ln.
Idaho Falls, Idaho 83404
208-360-2826
Karon Huggins
2132 N 2900 W
Arco, Idaho 83213

Cefalo, James

From: muchcorner@atcnet.net
Sent: Tuesday, February 18, 2020 4:26 PM
To: Cefalo, James
Subject: TP-34-26

Mr. Cefalo;

In regards to the above referenced application I would like to voice my opposition to the application. I live approximately 1000 feet from the Big Lost River and have had to deepen my well twice, with a new well having to be placed also. I do not approve of any diversion of water out of the river. It has cost this valley dearly.

Thank you for your time

Judy Stedtfeld
P.O. Box 175
Arco, ID. 83213

BUTTE COUNTY SHERIFF OFFICE INCIDENT REPORT

EVENT #	DISPATCHER	ASSIGNED OFFICER	DATE	TIME
2020-0194	Jessica	352	7/8/20	13:30 PM
COMPLAINT:				
Trespass				
LOCATION:				
2132 N 2900 W				
COMPLAINANT:				
Karon Huggins			PHONE:	208-589-7879
ADDRESS:				
2132 N 2900 W Arco, Idaho 83213				
OFFICER REMARKS:				
I was notified by Butte County Dispatch at 18:14 that Karon Huggins had said Mike Telford and Mark Hansen had put a pump station on the river by there property and trespassed on there land. Myself and Deputy Durkin met with Matea and her mother Karon Huggins at her house, Deputy Durkin and I and Matea walked to the East of the Huggins house about a half a mile where Matea showed us where Telfords and Hansen had put a pump station on the river. Showing us how they had took there fence down to put the pump, and had constructed a berm in the river to back up the river to feed the pump. I observed a berm in the river with some rip rap in it, and some fence paneling piled to the south of the pump that matea told Durkin and I that they had takin them down when they constructed the pump station and trespassed on there property. I tried to line up with there fence and to look down the fence and it appeared to be in there fence line but it was hard to tell with the river taking a turn right there and some willows in the way.				

Butte County Sheriff Office
256 West Grand Ave.
P. O. Box 130 Arco, Idaho 83213
Phone 208-527-8553 Fax 208-527-3916



BUTTE COUNTY SHERIFF'S OFFICE

156 w. Grand Ave - PO Box 130 - Arco, ID 83213

(208) 527-8553 Office - (208) 527-3916 Fax

SHERIFF DAVE HANSEN

Case# _____

List below as much information as you can about the incident: who, what, when, where, why, how.

On the date of July 8, 2020 At approximately the time of _____At the location of: KARON Huggins

Neighbors: 1) removed A section of fence by their pump
2) pulled back the bank to the point that the
fence line cannot be put back in on a straight
Row and 3) build A 4' berm on one side,
Approximately 6 foot berm across the entire river
on our side of the fence.

Need someone to ~~verify~~ verify condition -
Ask them if they trespassed onto our property.
If not - have not and provide a copy of this to me

Today's Date: July 8 20 Today's Time: 1:30 Today's Location: Sheriff's officeYour Full Legal Name: Karon Huggins Phone: 208-539-7879Your Physical Address: 2732 N 2900 St City: Arco State: IDYour Birthdate: 8/3/1940 Your Social Security Number: 518-44-9205Your Signature: Karon Huggins OLN Number: _____ BUTTE COUNTY SHERIFF'S OFFICE

Deputy: _____ Incident Number: _____

JUL 08 2020

352 dealt with this.

TIME 13:48
4